

THE
STATUTE LAW
OF
KENTUCKY;
WITH NOTES, PRÆLECTIONS, AND OBSER-
VATIONS ON THE PUBLIC ACTS.

IN THREE VOLUMES.

BY WILLIAM LITTELL, ESQ.

SIC VOS NON VOBIS, &c.—VIRGIL.

VOLUME II.

TO WHICH IS ADDED,

AN APPENDIX,

COMPREHENDING ALL THE

ACTS OF PARLIAMENT AND OF VIRGINIA,
OF A GENERAL NATURE,

REMAINING IN FORCE IN THE STATE OF KENTUCKY,

WHICH HAVE NOT BEEN INSERTED IN THE FIRST VOLUME OF
THIS WORK.

TOGETHER WITH

A TABLE OF REFERENCE

TO THE CASES ADJUDICATED IN THE COURT OF APPEALS,
SINCE OCTOBER TERM, 1808.

FRANKFORT, (KEN.)

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1810.

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c/

UNITED STATES OF AMERICA, }
DISTRICT OF KENTUCKY, } sct.

BE IT REMEMBERED, that on the second day of July, in the year of our Lord one thousand eight hundred and ten, and in the thirty-fourth year of the independence of the United States of America, WILLIAM HUNTER, of the said district, hath deposited in this office, the Title of a Book, the right whereof he claims as Proprietor, in the words and figures following, to wit:

“ The Statute Law of Kentucky; with notes, prælections, and observations on the public acts. In three volumes. By WILLIAM LITTELL, Esq. *Sic vos non vobis, &c.*—Virgil. Volume II. To which is added, an appendix, comprehending all the Acts of Parliament and of Virginia, of a general nature, remaining in force in the state of Kentucky, which have not been inserted in the first volume of this work. Together with a table of reference to the cases adjudicated in the court of appeals, since October term, 1808.”

IN CONFORMITY to the act of the Congress of the United States, entitled “ An act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the Authors and Proprietors of such copies, during the times therein mentioned;” and also to an act, entitled “ An act supplementary to an act, entitled an act for the encouragement of learning, by securing the copies of Maps, Charts and Books, to the Authors and Proprietors of such copies, during the times therein mentioned, and extending the benefits thereof, to the arts of Designing, Engraving and Etching, historical and other prints.”

(L. S.)

JOHN H. HANNA,
Clerk of the District of Kentucky.

PREFACE.

THIS volume closes with the tenth year of the commonwealth; and it is believed that the two volumes now published, contain all the statute law, of a general nature, which was in force in the year 1801. The third volume will, consequently, consist altogether of laws *enacted* since that time, except some local acts of Virginia, which apply exclusively to this country; these will be comprised in an appendix.

As to the acts of Kentucky, contained in this volume, it is unnecessary to say any thing: but some account will be expected of the numerous foreign acts contained in the appendix.

An examination of the English statute-book, for a period of nearly six hundred years, must be admitted to be a laborious task, even if it was all in one language: but this labor is rendered irksome and disgusting, by the variety of uncouth languages in which these statutes were written. It is true that the largest part of them were, about three hundred years ago, translated into the English of that day; but it is equally true, that many of them have never yet been translated. Of those which still remain in the Norman language, I have discovered none which I consider in force here, and only two in the Latin; these I have published without attempting any translation; understanding it to be an admitted rule, that a translation of a law has no authority, unless made by one appointed by the government for that purpose.

Those who are well acquainted with the English statute-book, will probably wonder why I have rejected so many acts of parliament; and those unacquainted with it, will equally wonder why I have retained so many. It is not to be expected, on a subject like this, that any thing I could say, would satisfy either the one or the other. I will, however, give a brief account of my views as to some.

With the strongest wishes to believe that the common law, and most of the statute law of England on the subject of fines;

was in force in this country, I was, on a thorough examination, compelled to decide that none of it was in force.

My reason for excluding all the acts respecting bankruptcy, was, that I did not think any of our judges authorised to issue a commission of bankruptcy.

Some statutory provisions for the punishment of offences, have become obsolete, from the great change which has taken place in the value of money. A fine of four pence, for an atrocious fraud, was once an adequate punishment: it would now be a burlesque on vindictive justice.

Those who may be disposed to think that too many acts have been retained, are respectfully reminded, that when Mr. Bradford's first volume was published, it was very generally believed to contain all the statute law in force in this country. This delusion was then almost universal; and not more than five years ago, two highly respected circuit judges told me that they did not consider a single act of parliament to be in force in this state.

These facts I considered as sufficient evidence, that on a subject so remote from popular view, public opinion, however general, was at any time a most delusive guide. I of course made no further inquiries respecting it; but employed myself in comparing the statute-books of Kentucky, Virginia, and England, together—rejecting what the constitution of Virginia bade me reject, and retaining what that had retained. Wherever I found that Virginia had, previous to the year 1792, adopted an act of parliament, and no similar one was to be found in our code, I have taken the Virginia instead of the English act.

I have never consulted my inclination in either excluding or retaining an act: conscious at all times, that whether it was in force or not, did not depend on my volition, or any opinion I might entertain of its merit or demerit, but upon the constitutions of Kentucky and Virginia. If it shall be found that some of the laws which I have published as being in force, contradict the adjudications of all the courts in the state, I cannot help it. A judicial decision, that no law exists on a particular subject, does not repeal a law actually existing. I remember the time when it was very solemnly adjudged, by a most tremendous tribunal, that "MAN HAD NO SOUL;" but I never understood that adjudication to have annihilated a single human soul, or that any apprehensions of its so doing, were entertained.

At first view, the reader may suppose that the many statutes respecting attornies, are of little use or application; but

if he has occasion to examine the law respecting attornies *in fact*, he will find these acts to be the source of it. The English statute respecting fraudulent conveyances, has been re-enacted, except the penal part of it; *this* unquestionably remains in force: and to prevent the reader from being bewildered, the whole statute has been introduced into the appendix. In some other places, parts of statutes which had been re-enacted, have been introduced, merely to give consistency and intelligence to what was indispensably necessary—as, for instance, in page 526, the important provision contained in the last sentence of the act of 1785, is perhaps the only one which has not been supplied; but the reader will see that it could not have been satisfactorily introduced, without taking in the whole of the 4th and 5th sections. But I think I may with the fullest confidence assure the public, that in the many cases in which I have found it necessary to divide an act of parliament or assembly, or to take only a fragment, and leave the balance, the part omitted has either been supplied, or is most incontestibly not in force, and unnecessary to the understanding of what I have retained.

I respectfully recommend the careful perusal of the appendix, to those who apprehend danger from that part of the English law remaining in force here. I am inclined to think that they will cease to consider it as oppressive or immoral in its tendency.

To conclude—there have been, in perhaps every state in the union, compilations of laws attempted and executed with various success; but never, I believe, on a plan as expansive as this. *My* duty has been not merely to examine and collate the legislative acts of a single state, through a period of fifty or sixty years; I have had to examine the legislative proceedings of Great Britain, from the earliest act on the parliament roll, through all her modifications of monarchy, anarchy, and despotism, to the commencement of the seventeenth century, and the acts of Virginia and Kentucky to the present time: in short, to pursue the ever varifying stream of legislation, through all kinds of government, and all changes of manners, for the appalling period of five hundred and seventy-five years. If I have often been bewildered, and sometimes finally mistaken, I have reason to believe that the same misfortunes have attended the execution of tasks somewhat similar, when attempted by men of greater talents than have ever been imputed to me.

WILLIAM LITTELL.

ERRATA.—Page 493, line 1, stat. 1, for "*concessitate*" read "*concessi tale*".—
Stat. 2, line 2, on the same page, for "*clamantum*" read "*clamantem*".—Page 509,
line 17 from the foot, for "*tabis*" read "*talis*".—Page 510, line 2 from the top, for
"*uquæ*" read "*quæ*".—Page 516, for "*novel, diffisijn*," read "*novel. diffisijn*."

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CONGRESS OF THE UNITED STATES;

NOVEMBER 15, 1776.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION;

Between the States of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

ARTICLE 1. THE stile of this confederacy shall be "THE UNITED STATES OF AMERICA."

ART. 2. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation *expressly* delegated to the United States in congress assembled.

ART. 3. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties and their mutual and general welfare: binding themselves to assist each other against all force offered to, or attacks made upon them or any of them on account of religion, sovereignty, trade, or any other pretence whatever.

ART. 4. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union; the free inhabitants of each of these states (paupers, vagabonds and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several states, and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabi-

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tants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant ; provided also that no imposition, duties or restriction, shall be laid by any state on the property of the United States or either of them.

If any person guilty of or charged with treason, felony or other high misdemeanor in any state, shall flee from justice and be found in any of the United States, he shall upon demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ART. 5. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No state shall be represented in congress by less than two nor by more than seven members ; and no person shall be capable of being a delegate for more than three years in any term of six years ; nor shall any person being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in any meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in congress assembled, each state shall have one vote.

Freedom of speech and debate in congress, shall not be impeached or questioned in any court or place out of congress ; and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on congress, except for treason, felony or breach of the peace.

ART. 6. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement,

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alliance or treaty with any king, prince or state ; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state ; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever, between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in congress assembled, for the defence of such state or its trade ; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state ; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted ; nor shall any state grant commissions to any ships or vessel of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be invested by pirates, in which case vessels of war may be fitted out for that occasion and kept so long as the danger

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shall continue, or until the United States in congress assembled shall determine otherwise.

ART. 7. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

ART. 8. All charges of war and all other expences that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

ART. 9. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated—of granting letters of marque and reprisal in time of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes or differences now subsisting or that hereafter may arise between two or more states

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concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" provided also, that no state shall be deprived of territory for the benefit of the United States.

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All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands and the states which passed such grants and adjusted the said grants or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the United States be finally determined, as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in congress assembled shall have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states; provided that the legislative right of any state within its own limits, be not infringed or violated—establishing and regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expences of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in congress assembled, shall have authority to appoint a committee to sit in the recess of congress, to be denominated "*a committee of the states*," and to consist of one delegate from each state, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expences—to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces—and to make requisitions

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from each state for its quota, in proportion to the number of white inhabitants in such state ; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expence of the United States ; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled ; but if the United States in congress assembled, shall on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed and within the time agreed on by the United States in congress assembled.

The United States in congress assembled, shall never engage in a war nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same ; nor shall a question on any other point, except for adjourning from day to day, be determined unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy ; and the yeas and nays of the delegates of each state on any question, shall be entered

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on the journal, when it is desired by any delegate ; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ART. 10. The committee of the states, or any nine of them, shall be authorised to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with ; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the United States assembled, is requisite.

ART. 11. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union ; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ART. 12. All bills of credit emitted, monies borrowed, and debts contracted by or under the authority of congress, before the assembling of the United States in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith, are hereby solemnly pledged.

ART. 13. Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual ; nor shall any alteration at any time hereafter be made in any of them ; unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of each state.

A C T S
OF THE
GENERAL ASSEMBLY
OF
KENTUCKY.

January Session, 1798.

CHAPTER I.

*AN ACT for reforming the method of proceeding in
Writs of Right.* 1798.

Approved January 16, 1798.

This is copied from a Virginia act of 1786, under which the cases of Hyers vs. Green, and Hyers vs. Wood were decided in the court of appeals of Virginia; in 1801. It was determined in the first of these cases that *non tenura* might be given in evidence where the wife was joined on the mere right—2 Call. 555, &c.

SECTION 1. **B**E it enacted by the General Assembly, That for trial of any disputed titles of land in a more simple mode, than that which hath most commonly been used of late, the claimant, or demandant, of an estate in fee simple, may sue forth against the possessor, or tenant, a writ of *præcipe quod reddat*; which issuing from the district court, shall be in this form, or to this effect—“The Commonwealth of Kentucky, to the sheriff of X, greeting: Command C. D. that he justly and without delay, render unto A. B. tenement containing of land, with the appurtenances, in the county of X, which he claimeth to be his right, and whereof he complaineth that the aforesaid C. D. doth withhold the possession. And unless he shall do so,

Claimant may
sue out a writ.

Form thereof

B

1798. then summon the said C. D. that he appear before the justices of our district court, at on the day of the next court, to shew wherefore he hath not done it, and have you then there this writ. Witness clerk of our said court, at the day of in the year .” And issuing from a court of quarter sessions, in the like form, with the necessary alterations, and shall be directed to the sheriff of that county wherein the tenant resideth, or that wherein was his last place of abode; upon which writ the count shall be in this form, or to this effect—“X. to wit, A. B. by F. G. his attorney, demands against C. D. tenement containing of land, with the appurtenances, in the county of X, and bounded by and whereupon the said A. B. saith that he hath right to have the tenement aforesaid, with its appurtenances, and offereth proof that such is his right.” If several tenements be demanded in the same count, the contents, situation and boundaries of each, shall be inserted therein. To which count the tenant may plead, in this form, or to this effect—“And the aforesaid C. D. by H. I. his attorney, cometh and defendeth the right of the said A. B. when and where, and where it behoveth him, and all that concerneth it, and whatsoever he ought to defend, and the tenement aforesaid, with its appurtenances, as of right, namely, tenement, containing of land in the county of X, and bounded by and put himself upon the assize, and prayeth recognition to be made, whether he hath greater right to hold the tenement aforesaid, with the appurtenances, as he now holds it (or them) or the said A. B. to have it as he now demandeth it (or them).” And to such plea, the replication shall be in this form, or to this effect—“And the aforesaid A. B. in like manner putteth himself upon the assizes, and prayeth recognition to be made, whether he hath greater right to hold the tenement aforesaid, as he demandeth, or the said C. D. as he holdeth it, (or them).” Whereupon twelve good and lawful men, qualified as jurors are required to be, shall be elected, tried and charged, as the manner is to make recognition of the assize; which charge shall be in this form, or to this effect—“You shall say the truth, whether C. D. hath more right to hold the tenement which A. B. demandeth against him, by his writ of right, or A. B. to have

To be directed
to the sheriff.

Form of count:

To which te-
nant may plead.

Form of plea.

Form of repli-
cation.

Jury to be
sworn.

Form of their
oath.

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it (or them) as he demandeth." And at the trial, every matter may be given as evidence, which might have been specially pleaded. And upon the verdict, or in case of a demurrer, the like judgment shall be given, and upon such judgment, the like execution awarded, in case of a writ of right; and the party for whom judgment shall be given, shall recover his costs of suit; and the demandant if he recover his *seisin*, may also recover damages, to be assessed by the recognitors of assize, for the tenant's withholding possession of the tenement demanded.

Sec. 2. Where the *præcipe quod reddat*, shall issue from the district court, if return thereof be made that the tenant is not found in the bailiwick of the officer to whom it was directed, the demandant may sue forth a writ of *exigi facias*, in this form, or to this effect—"The commonwealth of Kentucky, to the sheriff of X, greeting: We command you that you cause C. D. to be required from county court to county court, until five courts be passed, if he doth not appear; and if he doth appear, then summon him that he be before the justices of our district court at on the day of the next court, to shew wherefore he hath not rendered unto A. B. tenement, containing of land, with the appurtenances, in the county of X, and have you there then this writ. Witness, clerk of our said court, at the day of in the year ."

And when the residence or last place of abode of the tenant should be out of the county in which the land demanded lieth, the like writ of *exigi facias*, shall also be directed to the sheriff of the latter county; and in either case, a copy of such writ, shall, within four weeks after the test thereof, be printed in the Kentucky Gazette; and the said writ or writs of *exigi facias* being returned in due form, and being printed as aforesaid, if the tenant shall not appear at the court to which the same is or are returnable, judgment shall be entered that the demandant recover his *seisin* against the tenant.

Sec. 3. Where the *præcipe quod reddat* shall issue from a court of quarter sessions, if return thereof be made that the tenant is not found in the bailiwick of the officer to whom it was directed, the demandant may sue forth a new *præcipe* every court, for five courts following, successively, if the tenant be not by one or other of them

1793.

What may be given in evidence.

judgment and execution.

Costs.

Damages.

In a District Court.

Where there is a return of 'not found'

Ex. fa. to issue. Form thereof.

May be published.

And judgment thereon.

In a court of Quarter Sessions.

A new præcipe to issue, & how often.

JANUARY SESSION,

1798. ^{When a *testatum præcipe* shall issue.} before summoned, and whence the residence or last place of abode of the tenant shall be out of the county in which the land demanded lieth, a *testatum præcipe* shall also be directed to the sheriff, or proper officer, of the latter county; and in either case, a copy of the first of the five *præcipes* shall, within four weeks after the test thereof, be printed in the Kentucky Gazette, and a copy of that, and every other of them, shall, within fourteen days after the test of such, be set up at the door of his court-house, by the officer to whom it shall be directed; and who, by an endorsement on such writ shall be required by the clerk to do so; and return of the said five writs being made, that the tenant is not found in the bailiwick or bailiwicks of the officer or officers to whom they were directed, and that they had been set up, as has been before directed, and the first of them being printed, as aforesaid. If the tenant shall not appear at the court to which some one of the writs was returnable, judgment shall be entered that the demandant recover his *seisin* against the tenant; but if the tenant against whom, without having appeared or without having been summoned, any such judgment shall be rendered, shall be out of Kentucky at the time of the suit brought, the judgment shall be no bar to an action, commenced by him, or any claiming under him, to be restored to the land recovered, within a year and a day after he or they shall come into the country, or remaining out of it, within seven years after the judgment; in which action, or in a separate one, damages may also be recovered.

^{And when tenant does not appear, judgment to be entered against him.} ^{Judgment to be no bar in certain cases.} ^{Proceedings where default is made.} Sec. 4. If the tenant, whether summoned or not, shall appear, and afterwards make default, judgment shall be entered against him; and if having been summoned, he shall not appear, the court shall make an order, that unless he appear at the then next court, judgment shall be entered against him, which shall be entered accordingly. If a copy of that order, being delivered to him, or left at the place of his usual abode, fifteen days, or more, before such next court, and affidavit thereof being made, he shall not then appear.

^{Judgment no bar against infants, &c.} Sec. 5. If the demandant, or tenant, against whom any such judgment shall be rendered, at the time of the suit brought, shall be an infant, a married woman, or a person of an unsound mind, the judgment shall be no bar to another action, commenced within five years after the

VI. YEAR OF THE COMMONWEALTH.

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tainment of full age, discoverture, or recovery of understanding, or within the same time, after the death of such privileged person.

1798.

CHAPTER II.

An ACT reducing into one the several Acts for apprehending and securing Runaways.

Approved January 16, 1798.

This is collected from several Virginia Acts, which need not be referred to.

SECTION 1. *BE it enacted by the General Assembly,* That any person may apprehend a servant or slave, suspected to be a runaway, and carry him before a justice of the peace, who, if to him the servant or slave appear by the oath of the apprehender, to be a runaway, shall give a certificate of such oath, and the distance, in his opinion, between the place where the runaway was apprehended, and that from whence he fled; and the apprehender shall thereupon carry the runaway to the last mentioned place, or deliver him to the owner, or some other authorised to receive him, and shall be entitled to ten shillings, and one shilling for every mile of such distance as he shall necessarily carry him, to be paid by the owner. The runaway, if the owner be not identified to the satisfaction of the justice before whom he is taken, or reside not in the commonwealth, shall be by warrant of the justice committed to the jail of his county, the keeper whereof shall forthwith cause an advertisement, with a description of the runaway's person and wearing apparel, to be set up at the door of the court-house within his county; if the owner claim not within two months thereafter, the sheriff shall publish a like advertisement for three months in the Gazette of the public printer, and shall hire the runaway for such time and for such wages as his county court shall approve, and out of his wages pay the reward for apprehending, and the expences incurred on his account; but he shall deliver the runaway even before the time expire, and pay the balance of the wages received, if any, to him who shall claim, and who having proved, before the court of some county, or a justice of the peace of the county in which such runaway is confined, that he had lost such a one as was described in the advertisement, and having there given security to

Runaway, how to be apprehended.

Reward for taking up.

May be committed to jail. To be advertised.

How the owner may recover him.

1798. indemnify the sheriff, shall produce the clerk's or justice's certificate of such proof made and security given, proving by his own or another's oath, the runaway, when shewn to him, to be the same that was so lost, and pay so much as the expences aforesaid shall exceed the wages. The runaway being a slave, after the end of one year from the last advertisement, shall be sold, and the proceeds of the sale, with the balance of the wages, paid into the public treasury, for the use of the owner, proving his property at any future time, or otherwise for the use of the commonwealth. If the runaway die in jail, the expence shall be paid by the public.

Runaway may be sold, and when.

Reward for taking up, how recoverable.

Fees to the jailor.

Penalty for taking greater fees, and how recoverable.

Sec. 2. Upon any owner's neglecting or refusing to pay the above reward, the taker up may sue for and recover the same, with costs, either by warrant before a single justice, where the reward shall not exceed five pounds, or where the reward shall exceed that sum, by action in any court of record within this commonwealth.

Sec. 3. The keeper of any jail may demand and take for the commitment of any runaway, two shillings, current money, or twenty pounds of tobacco, and the same for releasement, and for every twenty-four hours keeping him, or her, in jail, one shilling, and no more; and if he or any sheriff or jailor shall demand any other or greater fee, than is or shall be allowed by law for runaways, he or they so offending, shall for every such offence, forfeit and pay twenty shillings to the party grieved, and shall also refund and pay back all money and tobacco received, over and above the legal fees, recoverable with costs, before any justice of the peace of the county where such offence shall be committed.

CHAPTER III.

An ACT reducing into one, the several acts concerning Servants.

Approved January 16, 1798.

The following provisions of an act of 1764, are, under some modification, still in force:

(*"An act to prevent the practice of selling persons as slaves that are not so, and for other purposes therein mentioned."*)

"III. And whereas by one act of assembly made in the twenty seventh year of the reign of his late majesty, entitled "An act for the better government of servants and slaves," it is, amongst other things, enacted that, if any

VI. YEAR OF THE COMMONWEALTH.

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Woman servant shall have a bastard child by a negro or mulatto, or if any free christian white woman shall have such bastard child by a negro or mulatto, in both cases, besides the punishment inflicted on the mother of such bastard, the Churchwardens shall bind the said child to be a servant until it be thirty-one years of age, which is an unreasonable severity towards such children: *Churchwardens to bind out mulatto bastard child*
Be it further enacted by the authority aforesaid, That from and after the passing of this act, the Churchwardens shall bind out such bastard children already born, and not yet bound out, or which shall hereafter be born, either of white women servants, or of free christian white women, to serve, the males to the age of twenty-one years, and the females to the age of eighteen years only, and no longer, any thing in the said in part recited act to the contrary thereof in any wise notwithstanding. *dren of white women, to 21 and 18.*

1798.

"IV. *And be it further enacted,* That the children hereafter to be born of mulatto women, during the time of their service, who are obliged by law to serve to the age of thirty-one years, shall serve the master or mistress of such mulatto woman, the males to the age of twenty-one, and the females to the age of eighteen years only, and no longer; any former law, custom, or usage, to the contrary thereof in any wise notwithstanding. *Children of mulatto women serve to 21 and 18.*

"V. *And be it further enacted,* That so much of the said in part recited act as is repugnant to this act shall be, and the same is hereby repealed." *Repealing clause.*

SECTION 1. *BE it enacted by the General Assembly,* That all white persons who shall come into this commonwealth under contract to serve another, in any trade or occupation, shall be compelled to perform such contract, specifically, during the term thereof, or during so much of the same as shall not exceed seven years; infants under the age of fourteen years, brought in under the like contract entered into with the consent of their father or guardian, shall serve to the age of twenty-one years only, or for such shorter term as the said contract shall have fixed. *What servants shall specifically perform their contracts.*

Sec. 2. The said servants shall be provided by their master with wholesome and sufficient food, clothing and lodging, and at the end of their service, if they shall not have contracted for any reward other than transportation, food, clothing and lodging, shall receive from him one new and complete suit of clothing, suited to the season of the year, to wit, a coat, waistcoat, pair of breeches and shoes, two pair of stockings, two shirts, a hat and blanket. *Master's duty to servants.*

Sec. 3. The benefit of the said contract of service shall be assignable by the master, to any person to whom the servant shall, in the presence of a justice of the peace, freely consent that it shall be assigned; the said justice attesting such free consent in writing, and shall also pass to the executors, administrators and legatees of the master. *Contracts for service, how assignable.*

Sec. 4. Any such servant being lazy, disorderly, guilt- *How lazy and*

1798.
disorderly ser-
vants may be
punished.

ty of misbehavior to his master, or in his master's family, shall be corrected by stripes, or order from a justice of the county wherein he resides, or refusing to work, shall be compelled thereto, in like manner, and moreover shall serve two days for every one he shall have refused to serve, or shall otherwise have lost without sufficient justification. All necessary expences incurred by any master, for apprehending and bringing home any absconded servant, shall be repaid by further service after such rates as the court of the county shall direct, unless such servant shall give security to be approved by the said court, for repayment in money within six months after he shall be free from service, and shall accordingly pay the same.

County courts
to hear servants
complaints.

Sec. 5. If any master shall fail in the duties prescribed by this act, or shall be guilty of in various demeanor towards his servant, it shall be redressed on motion by the court of the county wherein the servant resides, by immediate discharge from service if the injury were gross, or by a specific order for a change in his demeanor, and a discharge from service if such order be disobeyed.

Contracts be-
tween master &
servants void.

Sec. 6. All contracts between masters and servants during the time of service, shall be void.

Servants to be
secured in their
property.

Sec. 7. If any servant shall at any time, bring in goods or money, or during the time of their service, shall by gift, or any other lawful means, acquire goods or money, they shall have the property and benefit thereof, to their own use; and if any servant shall be sick, or lame, and so become useless or chargeable to the county, such master or owner shall maintain such servant until his or her whole time of service shall be expired; and if any master or owner shall put away, a lame or sick servant under pretence of freedom, and such servant becomes chargeable to the county, such master or owner shall forfeit and pay ten pounds, current money, to be recovered by action of debt or information by any person who will sue for the same, and applied towards lessening the county levy.

Sick and lame
servants not to
be discharged.

Who may not
have white ser-
vants.

Sec. 8. No negro, mulatto or Indian shall at any time purchase any servant, other than of their own complexion; and if any of the persons aforesaid shall nevertheless presume to purchase a white servant, such servant shall immediately become free, and be so held, deemed and taken.

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Sec. 9. In all cases of penal laws where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every fifty shillings current money, so that no servant shall receive more than forty lashes at any one time, unless such offender can procure some person to pay the fine.

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Punishment
of servants for
breaches of the
penal laws.

10. Every servant after the expiration of his or her time, and proof thereof made before the court of the county where he or she last served, shall have his or her freedom recorded, and a certificate thereof under the hand of the clerk, which shall be sufficient to indemnify any person for entertaining or hiring such servant; and if such certificate shall happen to be torn or lost, the clerk shall, upon request, issue another, reciting thereon the loss of the former; and if any person shall harbor or entertain a servant, not having and producing such certificate, he or she shall pay to the master or owner of such servant, one dollar for every natural day he or she shall so harbor or entertain such runaway, recoverable with costs, by action of debt in any court of record; and if any runaway shall make use of any forged certificate, or after delivery of a true certificate to the person hiring him or her, shall steal the same, and thereby procure other entertainment, the person entertaining or hiring, shall not be liable to the said penalty; but such runaway, besides making reparation for loss of time, and charges of recovery, shall stand two hours in the pillory on a court day for making use of such forged or stolen certificate, and the person forging the same shall forfeit and pay ten pounds current money, one moiety to the commonwealth and the other moiety to the owner of such runaway, or the informer, recoverable with costs in any court of record, and on failure of present payment or security for the same, within six months, such offender shall receive thirty-nine lashes on his or her bare back, well laid on at the common whipping-post; and where a runaway shall happen to be hired upon a forged certificate, and afterwards denies the delivery thereof, the *onus probandi* shall be upon the party hiring such runaway.

Servants when
free shall have
certificates
thereof.

Penalty for
harboring ser-
vants without
such certificates

Penalty for uf-
ing forged or
stolen certifi-
cates.

1798.

CHAPTER IV.

An ACT to amend the Penal Laws of this Commonwealth

Approved February 10, 1798.

This act was amended and explained in December, 1798—Chap. 119. In December, 1799, a supplemental act was passed—Chap. 206. In December, 1800, an amendatory act—Chap. 299. In December, 1801, a large amendatory act—Chap. 375. And two others in 1802—Vol. III, chaps. 34 and 35. And another in 1804—Vol. III, chap. 254. In 1805 an act was passed to amend the proceedings in criminal cases—Vol. III, chap. 302.

Preamble.

WHEREAS it frequently happens that wicked and dissolute men, resigning themselves to the dominion of inordinate passions, commit violations on the lives, liberties and property of others; and the secure enjoyment of these having principally induced men to enter into society, government would be defective in its principal purpose, were it not to restrain such criminal acts, by inflicting due punishment on those who perpetrate them; but it appears at the same time equally deducible, from the purposes of society, that a member thereof committing an inferior injury, does not wholly forfeit the protection of his fellow citizens, but after suffering punishment in proportion to his offence, is entitled to protection from all greater suffering; so that it becomes a duty in the legislature, to arrange in a proper scale the crimes which it may be necessary for them to repress, and to adjust thereto a corresponding gradation of punishments. And whereas the reformation of offenders, an object highly meriting the attention of the laws, is not effected at all by capital punishments, which exterminate instead of reforming, and should be the last melancholy resource against those whose existence is become inconsistent with the safety of their fellow citizens; which also weaken the state by cutting off so many, who, if reformed, might be restored sound members to society, who, even under a course of labor, might be rendered useful to the community, and who would be living and long continued examples, to deter others from committing the like offences. And forasmuch as experience in all ages and countries hath shewn that cruel and sanguinary laws defeat their own purpose, by engaging the benevolence of mankind to withhold prosecutions, to smother testimony, or to listen to it with bias; and by producing in many instances a total dispensation and impunity, under the names of pardon and benefit of clergy;

when if the punishment were only proportioned to the injury, men would feel it their inclination, as well as their duty, to see the laws observed ; for rendering crimes and punishments therefore more proportionate to each other,


1798.

Sec. 1. *Be it enacted*, That no crime whatsoever, committed by any free person against this commonwealth, (except murder of the first degree,) shall be punished with death, within the same. What murder punished with death.

Sec. 2. And whereas the several offences which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment : *Be it further enacted*, That all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree ; and all other kind of murder shall be deemed murder of the second degree, and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder in the first or second degree ; but if such persons shall be convicted by confession, the court shall proceed by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly. What deemed murder of the first degree.

Sec. 3. *And be it further enacted*, That every person liable to be prosecuted for petit treason, shall in future be indicted, proceeded against and punished as is directed in other kinds of murder, according to the degree. What of the second.

Sec. 4. Every person duly convicted of the crime of high treason, shall be sentenced to undergo a confinement in the jail and penitentiary house, hereinafter mentioned, for a period, not less than six, nor more than twelve years, and shall be kept therein at hard labor, or in solitude, and shall in all things be treated and dealt with as is hereinafter directed. Every person duly convicted of the crime of arson, or as being an accessory thereto, shall be sentenced to undergo a similar confinement, for a period not less than five, nor more than twelve years, under the same conditions as are hereinafter directed. Every person duly convicted of the crime of rape. Punishment of petit treason.
Of high treason.
Of arson.
Of rape.

1793.  of rape, or as being accessory thereto before the fact, shall be sentenced to undergo a similar confinement, for a period of time not less than four, nor more than twenty-one years; under the same conditions as are hereinafter directed. Every person duly convicted of the crime of sodomy, shall be sentenced to undergo a similar confinement, for a period of time not less than two, nor more than five years, under the same conditions as are hereinafter directed. Every person duly convicted of the crime of murder in the second degree, shall be sentenced to undergo a similar confinement, for a period not less than five years, nor more than eighteen years, under the same conditions as are hereinafter directed.

Of sodomy.

Of murder in the second degree.

Sec. 5. Every person convicted of robbery or burglary, or as accessory thereto before the fact, shall restore the thing robbed or taken, to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and be sentenced to undergo a similar confinement, for a period not less than three, nor more than ten years, under the same conditions as are hereinafter directed.

Of robbery or burglary.

Sec. 6. Every person convicted of horse-stealing, or as accessory thereto before the fact, shall restore the horse, mare or gelding stolen, to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and also undergo a similar confinement, for a period not less than two, nor more than seven years, under the same conditions as are hereinafter directed.

Of horse stealing.

Of larceny of four dollars and upwards.

Every person convicted of simple larceny, to the value of four dollars and upwards, or as accessory thereto before the fact, shall restore the goods or chattels so stolen, to the rightful owner or owners thereof, or shall pay to him, her or them, the full value thereof, or so much thereof as shall not be restored, and moreover shall undergo a similar confinement, for a period not less than one, nor more than three years, under the same conditions as are hereinafter directed.

Of larceny under four dollars.

Sec. 7. If any person shall feloniously take, steal and carry away any goods or chattels under the value of four dollars, the same order and course of trial shall be had and observed as for other simple larcenies, and he, she or they, being thereof legally convicted, shall be deemed guilty of petty larceny, and shall restore the goods and chattels so stolen, or pay the full value thereof to the

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owner or owners thereof, and be further sentenced to undergo a similar confinement, for a period not less than six months, nor more than one year, under the same conditions as are hereinafter expressed.

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Sec. 8. Robbery or larceny of obligations or bonds, bills obligatory, or bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates granted by or under the authority of this commonwealth, or of the United States, or any of them, shall be punished in the same manner as robbery or larceny of goods and chattels.

Of robbing or larceny of bonds &c.

Sec. 9. Every person who shall be convicted of having forged and counterfeited any gold or silver coin, which now is, or hereafter shall be passing, or in circulation within this state, or having falsely uttered, paid, or tendered in payment, any such counterfeit and forged coin, knowing the same to be forged and counterfeit, or having aided, abetted or commanded the perpetration of either of the said crimes, or shall be concerned in printing, signing or passing any counterfeit notes of the bank of the United States, knowing them to be such, or altering any genuine notes of the said bank, shall be sentenced to undergo a confinement, in the jail and penitentiary house hereinafter mentioned, not less than four years nor more than fifteen years, and shall be kept, treated and dealt with, in manner hereinafter directed, and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars.

For forging or counterfeiting gold or silver coin, &c.

Sec. 10. Whosoever on purpose and of malice aforethought, by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or cut off or disable any limb or member, with intention in so doing to maim or disfigure such person, or shall voluntarily, maliciously, and of purpose, pull or put out an eye, while fighting, or otherwise, every such offender, his or her aiders, abettors and counsellors, shall be sentenced to undergo a confinement in the said jail and penitentiary house, for any time not less than two, nor more than ten years, and shall be kept, treated and dealt with, in manner hereinafter mentioned, and shall also pay a fine not exceeding one thousand dollars, three-fourths whereof shall be for the use of the party grieved.

For maiming or disfiguring.

Sec. 11. Whosoever shall be convicted of any volun-

For voluntary man-slaughter.

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tary man-slaughter, shall be sentenced to undergo an imprisonment, at hard labor and solitary confinement, in the said jail and penitentiary house, for any time not less than two, nor more than ten years, and to give security for his or her good behaviour during life, or for any less time, according to the nature and enormity of the offence ; and for the second offence, shall be sentenced to undergo an imprisonment, at hard labor and solitary confinement, in the said jail and penitentiary house, for any time not less than six, nor more than fourteen years.

Of involuntary
man-slaughter.

Sec. 12. Whosoever any person shall be charged with involuntary man-slaughter, happening in consequence of an unlawful act, it shall and may be lawful for the attorney-general, or other person prosecuting the pleas of the commonwealth, with the leave of the court, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of man-slaughter, and such person or persons, on conviction, shall be fined or imprisoned as in cases of misdemeanor ; or the said attorney-general, or other person prosecuting the pleas of the commonwealth, may charge both offences in the same indictment, in which case the jury may acquit the party of one, and find him or her guilty of the other charge.

Privilege of
clergy abolished.

Sec. 13. All claims to dispensation from punishment by benefit of clergy, shall be, and are hereby forever abolished ; and every person convicted of any felony heretofore deemed clergyable, shall undergo an imprisonment at hard labor and solitary confinement, in the said jail and penitentiary house, for any time not less than six months, nor more than two years, and shall be treated and dealt with as is directed hereafter, except in those cases where some other specific penalty is prescribed by this act.

Murder of the
first degree pun-
ished with
death.

Jury shall find
in verdict the
time offenders
shall be confin-
ed.

Sec. 14. Every person convicted of murder of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck.

Sec. 15. The jury before whom any offender may be tried, shall decide upon, and in their verdict ascertain the time within the respective periods prescribed, during which such offenders shall undergo confinement in the jail and penitentiary house hereinafter mentioned, according to the directions of this act.

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Sec. 16. Every other felony, misdemeanor or offence, ^{1798.} whatsoever, not provided for this act, may and shall be punished as heretofore.

Sec. 17. The lands, tenements, goods and chattels, of ^{Estate of per-} all persons convicted under this act, shall be liable and ^{fons convicted} subject, in preference to all other demands whatever, ex- ^{liable to expen-} cept dower and jointure, in the first place to the discharge ^{ces of prosecu-} of the expences incurred by the commonwealth in the ^{tion, restitution} prosecution, conviction and removal of such offender; ^{&c, &c.} and in the next place, to whatever restitution or reparation may be adjudged to the injured party, and in case the estate of the party so convicted shall be incompetent to said purposes; after deducting the expences of prosecution as aforesaid, and of the support and clothing of said convict, the surplus, if any, shall go towards making reparation to the party injured; and in order to ascertain the amount thereof, the court before whom such offender is convicted, shall cause their clerk to certify to ^{Clerk to certify} the keeper of the said jail the amount of all costs and ^{the amount of} charges incurred in the prosecution and conviction of ^{the costs of pro-} such offender, and of the amount of reparation or resti- ^{secution, &c.} tution adjudged to be made by said offender to the party injured; which the said keeper shall enter in books to be kept by him for that purpose. In all cases where restitution or reparation is adjudged to be made to the party injured, such party shall be entitled to an execution for the amount thereof from the clerk of the court in which such offender shall have been convicted, and shall proceed therein as in cases of judgments at law, except only, that the goods and chattels of such convict taken in execution, shall not be replevied.

Sec. 18. And whereas the great saving of expences, as well as the beneficial effects to be produced by the present change in the mode of punishment, will very greatly depend on the choice of a proper situation for the said jail and penitentiary house: ^{Commissioners} *Be it therefore enacted,* ^{to fix seat of} That Harry Innis, Alexander S. Bullitt, Caleb Wallace, ^{penitentiary} Isaac Shelby and John Coburn, gentlemen, be and they ^{house and jail,} are hereby appointed commissioners, for the purpose of ^{and their duty.} choosing a situation for the said jail and penitentiary house, in some town or village within this commonwealth, which will be most likely to afford the necessary materials for the labor and employment of the said convicts, on the most easy, cheap and profitable terms, and

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Governor to fill
vacancies if any
happen.

Choice of a
place to be
made, and
when.

Subscriptions
may be recov-
ered in a sum-
mary way.

in the greatest abundance ; attending at the same time to the healthfulness of the said place ; and which will be most likely moreover to afford the most suitable persons contemplated by this act, to be employed in the superintendence and management of the same. And in case either of the said commissioners shall die or refuse to act, the governor shall fill up such vacancy with some other fit person. And whereas the funds of this commonwealth may not at present be fully competent to the complete erection of the said buildings, and to the purchase of a lot of ground on which to erect the same, and the benevolence of the good citizens of this commonwealth may induce them to give their aid : *Be it enacted*, That the said commissioners shall, within three months from the passage of this act, advertise for four weeks successively in the Kentucky Gazette, such times and places as they shall judge proper, when and where they will meet and receive any subscriptions that may be offered for the purchase of a lot of one acre of ground, and the erection of the buildings aforesaid. The said commissioners, or a majority of them, shall, within five months from the date, after severally taking an oath, well and truly to discharge the duties hereby imposed on them, to the best of their judgment, for the advantage of this commonwealth, proceed to the choice of a situation aforesaid, and to the purchase of one acre of ground. The said acre of ground, when purchased as aforesaid, shall be conveyed to the governor for the time being and his successors forever, for the use of this commonwealth, for the purposes aforesaid ; and the said commissioners shall give to the person so conveying the said lot, a certificate under their hands and seals, expressive of such purchase and the amount thereof, which shall entitle the holder thereof to receive the sum therein expressed, from the treasurer, by warrant from the auditor. All monies subscribed as aforesaid, upon condition of erecting said buildings at any particular place in the said subscriptions mentioned, shall, in case the commissioners aforesaid do make choice of such place, be considered as unconditionally due from such subscribers respectively, and may be recovered by the directors hereinafter mentioned, in case of non-payment on demand, by motion on ten days previous notice to such subscriber, in any court of record having jurisdic-

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tion thereof, from which there shall lie no appeal. The commissioners having completed as aforesaid the business to them committed, shall within ten days thereafter transmit to the governor a full statement thereof, under their hands and seals, together with the subscriptions for such place as they made choice of for the seat of the said buildings; and their powers shall then determine. The governor is hereby requested, so soon as he receives a return from the commissioners as aforesaid, to appoint three fit and proper persons as directors to contract for and superintend the building on the lot of ground to be purchased as aforesaid, a jail and penitentiary house, sufficient to contain thirty convicts at least. The said buildings shall be constructed of brick or stone, in a plain strong manner, and upon such plan as may hereafter be added to, with conveniency and propriety, and as may be best adapted for the accommodation, safe-keeping, and treatment of convicts, as contemplated by this act, as also for the accommodation of a keeper and his family. The said directors shall also cause to be built adjoining (or surrounding, as they may judge best) the said jail and penitentiary house, a wall, sufficiently strong, high and extensive to afford a yard for the use of the said convicts, and shall also cause to be built a suitable number of cells, to be constructed in the said yard, each of which shall be six feet in width, eight feet in length, and nine feet in height, and shall be constructed of brick or stone, upon such place as will best prevent danger from fire; and the said cells shall be separated from the common yard by walls of such height as, without unnecessary exclusion of air and light, will prevent all external communication; for the purposes of confining therein offenders, who may be sentenced to solitary confinement by virtue of this act.

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Directors to be appointed, and their duty.

Dimensions of the cells.

Sec. 19. And for the purpose of defraying the expence of such buildings, cells and wall, the said directors shall be, and are hereby authorised to draw upon the treasurer, which he is hereby directed to pay on warrant from the auditor, a sum not exceeding five thousand dollars; one half thereof to be paid on the first day of August next, and the residue within six months thereafter. The said directors shall, at the next session of the general assembly, lay before the legislature a plan of the buildings by them contracted for, and a statement of monies

5000 dolls. appropriated.

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arising from subscriptions; and shall receive for their services an adequate compensation, to be hereafter ascertained by the general assembly.

Males and females to be kept separate.

Sec. 20. The said jails and cells shall be appropriated to the purpose of confining such males and females as shall have been convicted of the offences above enumerated as punishable with imprisonment and labor, but the males and females are hereby required to be kept separate and apart from each other; and all the prisoners shall be subject to the visitation and superintendence of the inspectors hereinafter appointed.

Convicts when, and how to be removed from district courts.

Sec. 21. Every person convicted in any district court in this state, of any crimes (except murder of the first degree) herein before specified, shall, as soon as possible after conviction, be safely removed by the sheriff of the county, or sergeant of the corporation in which the crime or offence shall have been committed, and at the expence of the commonwealth, to the said jail and penitentiary house, and therein be kept during the term of their confinement, in the manner and on the terms hereinafter mentioned; and every sheriff or sergeant who shall neglect to remove and safely deliver at the jail aforesaid, such convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court of record, and applied, one half to the use of the county or corporation where the offence was committed, the other to such persons as shall sue for the same.

What portion of their time convicts to be kept in the solitary cells.

Sec. 22. Every person convicted of any of the crimes aforesaid, and who shall be confined in the jail and penitentiary house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term of his or her imprisonment, as the court in their sentence shall direct and appoint: *Provided*, that it be not more than one half, nor less than one-twentieth part thereof; and that the inspectors of the said jail shall have power to direct the infliction of the said solitary confinement, at such intervals, and in such manner as they shall judge best.

Nature of offence, &c. how transmitted to inspectors.

Sec. 23. And whereas it is of importance that the nature of the offence, and the former conduct and character of the convicts should be known by the said inspectors: *Be it further enacted*, that whensoever any person shall be convicted of any crime which now is capital, or a felony of death, the court before whom such con-

vic-tion is had, shall, before their adjournment to another term, make and cause to be transmitted to the said inspectors, a report or short account of the circumstances attending the crime committed by such convict, particularly such as tend to aggravate or extenuate the same, and also what character the said convict appeared on the trial to sustain, and whether he had at any time before been convicted of any felony or other infamous crimes ; which report the said inspector shall cause to be entered in books or registers to be provided for that purpose.

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Sec. 24. If any person convicted of any crime which now is capital, or a felony of death without benefit of clergy, shall commit any such offence a second time, and be thereof legally convicted, he or she shall be sentenced to undergo an imprisonment in the said jail and penitentiary house, at hard labor, during life, and shall be confined in the said solitary cells, at such times and in such manner as the inspectors shall direct ; and if any person sentenced to hard labor and solitary confinement by virtue of this act, shall escape or be pardoned, and after his or her escape or pardon, shall be guilty of any such offence as now is capital, or felony of death without benefit of clergy, such persons shall be sentenced to undergo an imprisonment for the term of twenty-five years, and shall be confined in the solitary cells aforesaid at the discretion of the said inspectors.

Punishment on second conviction.

After escape or pardon.

Sec. 25. If any person after this act shall, by proclamation of the governor as hereinafter mentioned, be declared in force, be convicted of any crime, committed before the said day, he or she shall be sentenced to undergo such pains and punishments as by the laws now in force, are prescribed and directed, unless such convict shall openly pray the court before whom such conviction shall be had, that sentence may be pronounced agreeably to the provisions of this act, for the like offence ; in which case the said court shall comply with the said prayer, and pass such sentence on such convict as they would have passed, had the said offence been committed subsequent to the said day.

What persons may avail themselves of the provision of this act.

Sec. 26. No person indicted for any crime, the punishment whereof is altered by this act, shall lose any peremptory challenge, to which he or she would have been entitled, had this act not been passed, nor be liable

Challenges as heretofore.

1798. to be tried in any other courts than those in which they now are, or may be tried for the same offences.

Provisions against contagious disorders.

Sec. 27. In order to prevent the introduction of contagious disorders, every person who shall be ordered to hard labor in the said jail, shall be separately lodged, washed and cleaned; and shall continue in such separate lodging, until it shall be certified by some physician that he or she is fit to be received among the other prisoners; and the clothes in which such person shall then be clothed, shall either be burnt, or at the discretion of two of the said inspectors, be baked, fumigated, or carefully laid by until the expiration of the term for which such offender shall be sentenced to hard labor, to be then returned to him or her.

Treatment of convicts.

Sec. 28. All such convicts shall, at the public expence, during the term of their confinement, be clothed in habits of coarse materials, uniform in colour and make, and distinguishing them from the good citizens of this commonwealth; and the males shall have their heads and beards close shaven, at least once every week; and all such offenders shall, during the said term, be sustained upon bread, Indian meal, or other inferior food, at the discretion of the said inspectors, and shall be allowed two meals of coarse meat in each week, and shall be kept, as far as may be consistent with their sex, age, health, and ability, to labor of the hardest and most servile kind, in which the work is least liable to be spoiled by ignorance, neglect, or obstinacy, and where the materials are not easily embezzled or destroyed; and if the work to be performed is of such a nature as may require previous instruction, proper persons for that purpose, to whom a suitable allowance shall be made, shall be provided by order of any three of the inspectors hereinafter named; during which labor the said offenders shall be kept separate and apart from each other, if the nature of their several employments will admit thereof; and where the nature of such employment requires two, or more to work together, the keeper of the said jail, or one of his deputies, shall, if possible, be constantly present.

Hours of labor.

Sec. 29. Such offenders, unless prevented by ill health, shall be employed in work every day in the year, except Sundays, and such days when they shall be confined in the solitary cells; and the hours of work in each day, shall be as many as the season of the year, with an inter-

val of half an hour for breakfast, and an hour for dinner, will permit, but not exceeding eight hours in the months of November, December and January; nine hours in the months of February and October, and ten hours in the rest of the year; and when such hours of work are past, the working tools, implements and materials, or such of them as will admit of daily removal, shall be removed to places proper for their safe custody, until the hour of labor shall return.

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Sec. 30. The keeper of the said jail shall from time to time, with the approbation of any three of the inspectors hereinafter mentioned, provide a sufficient quantity of stock and materials, working tools and implements for such offenders, for the expences of which the said inspectors, or any three of them, shall be, and they are hereby authorised to draw orders, to be counter-signed by the auditor of public accounts, on the treasurer of this commonwealth, if need shall be, specifying in such orders the quantity and nature of the materials, tools, or implements wanted, which order the said treasurer is hereby requested to discharge out of any money which may be at the time in the treasury; for which materials and implements, when received, the said keeper shall be accountable; and the said keeper shall, with the approbation of any three of the said inspectors, have power to make contracts with any person whatever, for the clothing, diet, and all other necessities for the maintenance and support of such convicts, and for the implements, and of any kind of manufacture, trade or labor, in which such convicts shall be employed, and for the sale of such goods, wares and merchandize as shall be there wrought and manufactured; and the said keeper shall cause all accounts concerning the maintenance of such convicts and other prisoners, to be entered regularly in a book or books to be kept for that purpose; and shall also keep separate accounts of the stock and materials so wrought, manufactured, sold, and disposed of, and the monies for which the same shall be sold, and when sold, and to whom, in books to be provided for those purposes, all which books and accounts shall be at all times open for the examination of the said inspectors, and shall be regularly laid before them at their quarterly or other meetings as hereinafter directed, for their approbation and allowance.

Materials how
procured.Clothing, &c.
how provided.Accounts how
kept.

1793. **Sec. 31.** If the said inspectors at their quarterly or other meetings, shall suspect any fraudulent or improper charges, or any omission in any such accounts, they may examine upon oath or affirmation, the said keeper or any of his deputies, servants or assistants, or any person of whom any necessities, stock, materials, or other things have been purchased for the use of the said jail, or any persons to whom any stock or materials wrought or manufactured therein have been sold, or any of the offenders confined in such jail, or any other person or persons, concerning any of the articles contained in such accounts, or any omission thereout, and in case any fraud shall appear in such accounts, the particulars thereof shall be reported by the said inspectors to the court of the county in which such jail is situate, for the purposes hereinafter mentioned.

Sec. 32. In order to encourage industry as an evidence of reformation, separate accounts shall be opened in the said books for all convicts who have no property and are sentenced to hard labor for six months and upwards, in which such convicts shall be charged with the expences of their prosecution and conviction, and of clothing and subsistence, and of such proportionable part of the expences of the raw materials upon which they shall be employed, as the inspectors at their quarterly or other meetings, shall think just, and shall be credited with the sum or sums from time to time, received by reason of their labor ; if the same shall be found to exceed the said expences, the said excess shall be laid out in making restitution to the party injured ; and if none is adjudged them, in decent raiment for such convicts at their discharge, or otherwise applied to their use and benefit, as the said inspectors shall upon such occasion direct ; and if such offender at the end or other determination of his term of confinement, shall labor under any acute or dangerous distemper, he shall not be discharged, unless at his own request, until he can be safely discharged.

Sec. 33. No persons whatever, except the keeper, his deputies, servants or assistants, the said inspectors, officers and ministers of justice, members of the general assembly, ministers of the gospel, or persons producing a written license, signed by one of the said inspectors, shall be permitted to enter within the walls where such

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offenders shall be confined ; and the doors of all the lodging rooms and cells in the said jail shall be locked, and all light therein extinguished at the hour of nine, and one or more watchmen, if thought necessary by the keeper, shall patrol the said jail at least twice in every hour from that time until the return of the time of labor in the morning of the next day.

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Sec. 34. The walls of the cells and apartments in the said jail shall be whitewashed with lime and water at least once in every year, and the floors of the said cells and apartments shall be washed once every week, or oftener, if the said inspectors shall so direct, by one or more of the said prisoners in rotation, who, at the discretion of the said keeper, shall have an extra allowance of diet, for so doing ; and the said prisoners shall be allowed to walk and air themselves for such stated time as their health may require, and the said keeper shall permit : and if proper employment can be found, such prisoners may also be permitted, with the approbation of one of the said inspectors, to work in the yard, provided such airing and working in the yard be in the presence or within the view of the said keeper, or his deputies or assistants.

Apartment
how cleaned?

Sec. 35. One or more of the apartments in the said jail, shall be fitted up as an infirmary, and in case any such offender being sick, shall upon examination of a physician be found to require it, he or she shall be removed to the infirmary, and his or her name shall be entered in a book to be kept for that purpose ; and when such physician shall report to the said keeper, that such offender is in a proper condition to quit the infirmary, and return to his or her employment, such report shall be entered by the said keeper in a book to be kept for that purpose, and the said keeper shall order him or her back to his or her former labor, so far as the same shall be consistent with his or her state of health ; and the county court of the county in which such jail is, shall from time to time appoint a physician to attend the said jail.

Infirmary pro-
vided.

Sec. 36. The keeper of the said jail shall have power to punish all such prisoners guilty of assaults within the said jail, when no dangerous wound or bruise is given, profane cursing and swearing, or indecent behavior, idleness or negligence in work, or wilful mismanage-

Convicts how
punished for
misbehavior.

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ment of it, or of disobedience to the orders or regulations hereinafter directed to be made, by confining such offenders in the solitary cells of the said jail, and by keeping them upon bread and water only, for any term not exceeding two days ; and if any prisoner shall be guilty of any offence within the said jail which the said keeper is not hereby authorised to punish, or for which he shall think the said punishment is not sufficient, by reason of the enormity of the offence, he shall report the same to two of the said inspectors, who, if upon proper enquiry they shall think fit, shall certify the nature and circumstances of such offence, with the name of the offender, to the county court where such jail is situate, and the court shall thereupon order such offences to be punished by moderate whipping, or repeated whippings not exceeding thirteen lashes each, or by close confinement in the said solitary cells with bread and water only for sustenance, for any time not exceeding six days, or by all the said punishments.

Keeper how
appointed.

Sec. 37. It shall be lawful for the governor for the time being, to appoint a suitable person to be keeper of the said jail, who shall however be removed whenever occasion may require ; in which case another shall from time to time be appointed in like manner, who shall receive such compensation for his services, and in lieu of all fees and gratuities, by reason or under colour of the said office, as the legislature from time to time shall direct, to be paid in quarterly payments, by orders drawn on the treasury of this commonwealth by the auditor of public accounts, and also five per centum on the sales of all articles, manufactured by the said criminals ; and such keeper shall have power, with the approbation of the governor, to appoint a suitable number of deputies and assistants, who shall also receive such allowances as the legislature shall think just, which allowance shall be paid quarterly in like manner ; and before any such jailor shall exercise any part of the said office, he shall give bond to the governor of the commonwealth, with two sufficient sureties, to be approved by the court of the county where such jail is, in the sum of two thousand dollars, upon condition, that he, his deputies and assistants, shall well and faithfully perform the trust and duties in them reposed ; which said bond, being executed before, and certified by the said court, shall be legal.

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evidence in all courts of law in any suit against such jailor or his deputies.

1798.

Sec. 38. It shall be lawful for the said court of the county where such jail is, at the first court after the time when the said jail shall be erected agreeable to the directions of this act, to appoint six inspectors, three of whom shall be in office for six months, and three for twelve months, and so during every succeeding six months, three inspectors shall be appointed by the said court, who shall be in office for twelve months; and if any person so appointed, not having a reasonable excuse, to be approved of by the said court, shall refuse to serve in the said office, he shall forfeit and pay the sum of thirty dollars: to be recovered by action of debt, the one half to the use of the person suing, the other half to be paid to the treasurer of this commonwealth, to be applied to the purposes hereinbefore mentioned.

Inspectors how appointed.

Sec. 39. The said inspectors, four of whom shall be a quorum, shall meet once in three months in an apartment to be provided for that purpose in the said jail, and may be specially convened by the acting inspectors when occasion shall require; and they shall at their first meeting appoint one of their members to be acting inspector, who shall continue for such time as shall be directed by the said inspectors, or a majority of them, when met together; and the acting inspector shall attend the said jail, at least once in each week, and shall examine into and inspect the management of the said jail, and the conduct of the said keeper and his deputies, so far as respects the said offenders employed at hard labor by the directions of this act, and shall do and perform the several matters and things hereinbefore directed by them to be performed.

Their duty.

Sec. 40. The board of inspectors, at their quarterly or other meetings, shall make such other and further orders and regulations for the purpose of carrying this act into execution as shall be approved of by the governor, and such orders and regulations shall be hung up in at least three of the most conspicuous places in the said jail: and if the said keeper or any of his deputies or assistants shall obstruct or resist the said inspectors or any of them in the exercise of the powers and duties vested in them by this act, such person shall forfeit and pay the sum of sixty dollars, to be recovered as aforesaid, and

To make rules and regulations.

1798. shall moreover be liable to be removed in manner aforesaid, from his respective office or employment in the said jail.

Punishment of keeper in case of escapes. Sec. 41. The said keeper of the jail, his deputies and assistants, in case any of the said offenders shall escape from confinement without the knowledge or consent of the said keeper, his deputies or assistants, shall forfeit and pay the sum of thirty dollars, to be recovered and applied in manner aforesaid: *Provided*, That nothing in this act contained shall be deemed or taken to extend to escapes voluntarily suffered by the keeper of the said jail.

Escapes how punished. Sec. 42. If any such offender sentenced to hard labor shall escape, he or she shall on conviction thereof suffer such additional confinement and hard labor, agreeable to the directions of this act, and shall also suffer such additional corporeal punishment not extending to life or limb, as the court in which such offender shall have been convicted, shall adjudge and direct.

Spiritous liquors prohibited. Sec. 43. If the jailor or any other person, shall introduce into, or give away, barter, or sell within the said jail, any spiritous or fermented liquors, except only such as the said keeper shall make use of in his own family, or such as may be required for any prisoner in a state of ill health, and for such purpose prescribed by an attending physician, and delivered into the hands of such physician, or other person appointed to receive them, such person shall forfeit and pay the sum of twenty dollars, one moiety thereof to the use of the person suing, the other moiety to be paid to the said inspectors for the purposes in the act contained.

Slaves excluded. Sec. 44. Slaves are excluded from the provisions of this act.

Repealing clause. Sec. 45. All acts and parts of acts coming within the purview of this act, shall on the operation of this act, be thereby repealed.

Commencement. Sec. 46. This act so far as respects the purchase of a lot and the erection of the buildings therein mentioned, shall commence and be in force from and after the passage thereof, but the residue thereof which respects the change in the mode of punishment shall be suspended until the governor by his proclamation shall declare the said buildings are erected and in order to admit and treat criminals in conformity to the regulations of this

act, at which time the whole of this act shall be in full force. 1798.

CHAPTER V.

An ACT for preventing Trespasses, and declaring what shall be deemed a lawful Enclosure.

Approved January 16, 1798.

Vide Volume I, Chap. 50.

SECTION 1. *BE it enacted by the General Assembly,* What shall be a lawful fence. That if any horses, mares, cattle, hogs, sheep or goats, shall break into any grounds, being enclosed with a strong and sound fence, five feet high, and so close that the beasts breaking into the same, could not creep through; or with an hedge two feet high, upon a ditch three feet deep and three feet broad, or instead of such hedge, a rail fence of two feet and a half high, the hedge, or fences, being so close that none of the creatures aforesaid can creep through, which shall be counted a lawful fence; the owners of such horses, mares, cattle, hogs, sheep or goats, or any one of them, shall, for the first trespass so committed, make reparation to the party injured, for the true value of the damages he shall sustain, and for every trespass afterwards, double damages, to be recovered with costs, in any court of record; provided that for a third offence, for any one of the beasts aforesaid, breaking into such enclosures, it shall be at the election of the party injured, to sue for his damages or to kill and destroy the beasts so trespassing, without being answerable for the same. Penalty on the owners of beasts breaking such enclosures.

Sec. 2. And that the condition of the fence at the time of the trespass committed, may be proved to a jury upon trial: *Be it enacted,* That upon complaint made by the party injured, before any justice of the peace for that county wherein such trespass shall be, such justice is hereby empowered and required to issue his order without delay, to three honest house-keepers of the neighborhood, no ways related to the party injured, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and to take memorandums of the same, and their testimony in such case shall be good evidence to the jury as touching the lawfulness of the fence. Where the party injured may sue or destroy beasts. How the fence shall be reviewed.

1798. Penalty for hurting beasts in grounds not lawfully fenced Sec. 3. If any person damnified for want of such sufficient fence, shall hurt, wound, lame, kill, or destroy ; or cause to be hurt, wounded, lamed, killed, or destroyed, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, cattle, sheep, goats or hogs, he, she or they so offending shall pay and satisfy to the owner of the creatures so hurt, wounded, lamed, killed, or destroyed, double damages with costs, recoverable as aforesaid.

Penalty for taking boats or other vessels. Sec. 4. Every person who, without leave of the owner, shall take away any boat or other vessel, shall, for every such offence, pay seven dollars to the owner thereof, over and above the damage such boat or vessel shall sustain, and over and above the charge in bringing back such boat or other vessel, to be recovered with costs, in like manner as sums of that amount are recoverable by law ; and if the person so trespassing shall be a servant, he or she shall make the like satisfaction, by his or her service, when the time due to his or her master or owner shall be expired ; and where there shall be several offenders in one trespass, every person shall be liable for the whole penalty.

CHAPTER VI.

An ACT declaring when the Death of Persons absenting themselves shall be presumed.

Approved January 22, 1798.

Copied from an act of 1786.

BE it enacted by the General Assembly, That any person absenting himself beyond sea, or elsewhere, for seven years successively, shall be presumed to be dead, in any case wherein his death shall come in question, unless proof be made that he was alive within that time. But an estate recovered in any such case, if in a subsequent action or suit, the person presumed to be dead shall be proved to be living, shall be restored to him who shall have been evicted ; and he may moreover demand and recover the rents and profits of the estate, during such time as he shall have been deprived thereof, with lawful interest.

CHAPTER VII.

1798.

An ACT concerning Escheators.

Approved January 22, 1798.

This is a tranſcript of a law paſſed in Virginia, in the year 1785, and repealed the next ſeſſion by another act containing the ſame provisions.

SECTION 1. *BE it enacted by the General Assembly,* That there ſhall be one eſcheator commiſſioned in every county by the governor, who ſhall execute his office in proper perſon, and not by deputy, and ſhall, before the court of the county, be bound in the penalty of one thouſand pounds, with ſecurity to be approved by the ſame court, duly to perform the duty of the ſaid office.

Escheators to be appointed.

To give bond and ſecurity.

Sec. 2. The ſaid eſcheator ſhall ſit in convenient and open places, and ſhall take his inqueſt of fit perſons, who ſhall be returned and empannelled by the ſheriff of the county, and ſhall ſuffer every perſon to give evidence openly in their preſence, to ſuch inqueſts; and the ſaid inqueſition ſo taken, ſhall be by indentures to be made between the ſaid eſcheator and them of the inqueſt, whereof the counterpart, ſealed by the eſcheator, ſhall remain in the poſſeſſion of the firſt perſon that ſhall be ſworn in the ſaid jury, and by him ſhall be returned to the court of the ſame county, there to be recorded; and the other part, ſealed by the jurors, ſhall by the eſcheator be ſent into the diſtrict court within one month after the inqueſt taken, and if it be found for the commonwealth, and there ſhall be any man that will make claim to the lands, he ſhall be heard without delay, on a traverse to the office, *monſtrans de droit*, or petition of right, and the ſaid lands or tenements ſhall be committed to him, if he ſhew good evidence of his right and title to hold until the right ſhall be found, and diſcuſſed for the commonwealth, or for the party finding ſufficient ſurety to proſecute his ſuit with effect, and to render and pay the commonwealth the yearly value of the lands, if the right be diſcuſſed for the commonwealth.

When & where they are to take their inqueſts.

Mode of proceeding where any man claims the land.

Sec. 3. No lands nor tenements ſeized into the hands of this commonwealth, upon ſuch inqueſt taken before eſcheators, ſhall be in anywiſe granted, nor to farm let, to any, if it be not to him or them which claim as is aforeſaid, till the ſame inqueſts and verdicts be fully returned into the diſtrict court, nor within ſix months after the ſame return, but ſhall entirely and continually remain in

Lands ſeized by the commonwealth, not to be let to farm to any but the perſon claiming them.

1798. the hands of the escheators, who shall answer to the commonwealth the issues and profits yearly coming of the said lands and tenements without doing waste or destruction.

Where and how they shall be fold, if not claimed, or being claimed, the right be found in the commonwealth.

Sec. 4. If no person within the six months before mentioned, make claim to the lands or tenements so seized, or claim being so made; if it be found and discussed for the commonwealth, the clerk of the district court shall within one month thereafter certify to the escheator of the county wherein the lands lie, that no claim hath been made, or that being made, it hath been discussed for the commonwealth; which escheator shall thereupon proceed to make sale of the lands, for the benefit of the commonwealth, to him who will give the most, after one month's public notice of the time and place of doing the same, and shall certify the purchaser and price to the register of the land-office, who, on receiving a certificate that such price hath been paid into the treasury, shall have a grant issued to the purchaser, in such manner as is by law directed in the case of unappropriated lands.

Saving to persons their terms for years, &c. whether they be or not found in the inquisition.

Sec. 5. Where any person holds lands or tenements for term of years, or hath any rent, common office fee, or other profit apprender of any estate of freehold, or for years or otherwise, out of such lands or tenements, which shall not be found in such office or inquisition, such person shall hold and enjoy his lease, interest, rent, common office fee and profit apprender in manner as if no such office or inquisition had been found, or if such lease, interest, rent, common office fee, or profit apprender, had been found in such inquisition; also, if one person or more be found heir, by office or inquisition, in one county; and another person be found heir to the same person, in another county; or if any person be untruly found lunatic, idiot, or dead, the person grieved by such office or inquisition may have his *traverse* or *monstrans de droit*; to the same, without being driven to any petition of right, and proceed to trial therein, and have like remedy and restitution upon his title, found or judged for him therein, as in other cases of traverse upon a true inquisition found.

Where a traverse, &c. may be had in an inquisition.

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CHAPTER VIII.

1798.

AN ACT allowing a Bill of Exception to be sealed.

Approved, January 16, 1798.

This is copied from an act of 1789, which is a translation of a clause in the statute of Westminster on that subject. A much more effectual provision had already been made, in 1793—*Vide* Vol. I. Chap. 125—which, however, was afterwards re-enacted, in 1800, in the act to amend Civil proceedings—(Chap. 294.)

SECTION 1. *Be it enacted by the General Assembly,* That when one impleaded before any court and in any cause where appeal, writ of error, or *supersedeas* lies to a higher court, doth alledge an exception, praying that the justices will allow it; if they will not allow it, and he that alledgeth the exception, doth write the same exception, and require that the justices will put their seals in testimony thereof, the justices, or the greater part of them present, shall so do; and if such higher court, upon complaint made of the said justices, cause the record to come before them, and the same exception be not found in the roll, and the plaintiff shew the exception written with the seals of the justices put to it, the justices shall be commanded that they appear at a certain day, either to confess or deny their seals, and if the justices cannot deny their seals, they shall proceed to judgment, according to the same exception as it ought to be allowed or disallowed.

CHAPTER IX.

An ACT declaring the Law concerning the Escape of Debtors and other prisoners.

Approved, January 16, 1798.

This act introduces nothing new—nor does it exhibit the whole law on the subject. An act of 1753, had rendered a sheriff liable on motion, and his executors or administrators liable in an action of debt for the escape of a person in execution—which provision is contained in the general act of 1796, respecting sheriffs—*Vide* also an act of 1802, as connected with this subject—(Vol. III. Chap. 31.)

SECTION 1. FOR the more effectual re-taking and securing prisoners who escape out of prison, *Be it enacted,* That if any person committed, rendered or charged in custody, in execution, or upon *mesne* process, to any county prison, or to the jail of any district, shall thence escape, it shall and may be lawful for any justice of the

Process against
prisoners esca-
ped.

1793. peace, in the county where such prisoner was in custody, upon oath of such escape before him made, by the sheriff, under-sheriff, jailor, or other creditable person, to grant unto any person demanding the same, one or more warrants, under his hand and seal, directed to all sheriffs and constables within this commonwealth, reciting the cause of such prisoner's commitment, and time of his or her escape, and commanding them and every of them, in their respective counties and precincts, to seize and re-take such prisoner so escaped or going at large, and being so re-taken, forthwith to convey and commit to the prison where debtors are usually kept, in the county where such re-taking shall be, there to be kept in safe custody, until he or she be thence discharged by due course of law ; which warrant the sheriff is hereby required to obey, and to receive the prisoner into his safe custody, and to give a notice to the person or persons delivering him or her, testifying his receipt of such prisoner, and shall also make return of the execution of such warrant, to the court of that county or district from whence the prisoner escaped ; and if he or she was there in custody charged in execution, then the sheriff shall safely keep him or her, without bail or mainprize, until he or she shall make full payment and satisfaction, to the plaintiff or plaintiffs, creditor or creditors, in whose name such execution was sued out, or until the judgment or judgments obtained against him or her, shall be reversed or discharged by due course of law ; and if such prisoner shall have been in custody upon *mesne* process in any action of debt, or upon the case, the sheriff to whom he or she shall be re-committed, shall in like manner keep such prisoner in safe custody, and make return of the execution of the warrant by which he or she was re-taken, to the court of that county or district wherein he or she was first arrested, and thereupon it shall be lawful for such court, upon the plaintiff's or creditor's filing his declaration, to proceed and give judgment thereon, according as the truth of the case shall appear to them, in the same manner as if the defendant had appeared in the said court, and refused to plead, unless such defendant shall cause special bail to be entered in the said court, and shall immediately plead to issue, and then upon certificate under the hand of the clerk of the said court, that such bail is given, delivered

Escape warrants

Return thereof upon re-taking the prisoner, & proceedings thereon.

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to the sheriff in whose custody such defendant then shall be, it shall be lawful for the sheriff to set at large such prisoner, and not otherwise; but where any prisoner escaped and re-taken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other crime or cause in behalf of the commonwealth, for which he or she ought to be tried in the district court, and shall be for such cause removed to the jail of this commonwealth, such prisoner shall be charged in the said public jail, with all the causes he or she stood charged in the prison from whence he or she was so removed, until he or she be thence delivered by due course of law, in like manner as is herein directed.

1798.

Sec. 2. When any person in execution who shall have obtained the liberty of the prison rules, by giving bond and security for the same, shall hereafter escape and go out of the same, the sheriff of the county where such prisoner was in custody, shall and is hereby required immediately to apply to a justice of the peace for an escape warrant to re-take such prisoner, according to the directions of this act; and such sheriff shall, and is hereby required, immediately to give notice thereof to the creditor at whose suit he was in custody, or to his attorney or agent, and shall assign over and deliver to such creditor, or his attorney, the bond by him taken for the liberty of the prison rules, who shall be obliged to receive the same, and thereupon it shall and may be lawful for such creditor, or his attorney, to pursue the method directed by this act for re-taking such debtor, upon the escape warrant aforesaid; and if he be re-taken thereon, and be re-committed to jail, the securities for his keeping the prison rules shall be discharged from their bond, or such creditor, or his attorney, shall, and may, at their election, commence and prosecute an action or suit at law against the security or securities named in such bond for the recovery of his debt, notwithstanding he shall have applied for and obtained an escape warrant against his debtor as aforesaid; if such debtor is not re-taken and committed to jail thereupon, the sheriff shall not be liable or answerable for the payment of the debt for which such prisoner was in custody, unless the security or securities named in the bond by him taken of such prisoner for the liberty of the prison rules, shall after-

Mode of proceeding against prisoner escaping from the prison rules.

1798.

Recital.

wards be found to have been insufficient for the payment of such debt, at the time such bond was taken.

Sec. 3. And whereas the situation of most prisons in this commonwealth, hath given opportunities to evil disposed persons to break open the same, and turn out debtors and others in custody, to the hindrance of justice, prejudice of creditors, and ruin of sheriffs, who have been compelled to pay the debts with which such prisoners stood charged : for remedy whereof,

When and how
a sheriff is made
liable for el-
capes.

Sec. 4. *Be it further enacted*, That no judgment shall be entered against any sheriff or other officer upon any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue, shall expressly find that such debtor or prisoner did escape with the consent, or through the negligence of such sheriff or his officer or officers, or that such prisoner might have been re-taken, and that the sheriff and his officers neglected to make immediate pursuit.

An action of
debt may be
maintained a-
gainst a sheriff.

Sec. 5. *Provided always*, That where any sheriff shall have taken the body of any debtor in execution, and shall wilfully and negligently suffer such debtor to escape, and such sheriff, or the person suing out such execution, shall die before a recovery can be had against such sheriff for such escape, the person suing out such execution, his executors or administrators, shall and may have and maintain an action of debt against such sheriff, his executors or administrators, for the recovery of all such sums of money and tobacco as are mentioned in such execution, and damages for detaining the same ; any law, custom or usage to the contrary notwithstanding.

Penalty on
private persons
suffering priso-
ners in their
custody to es-
cape.

Sec. 6. If any private person have any prisoner in his keeping, arrested for suspicion of felony, treason or murder, and the person that is so arrested escape by negligent keeping, before that he be brought to jail, then the person from whom such prisoner so escaped, shall be liable to a fine, on being found guilty on an indictment in the court of that district in which such escape was made.

CHAPTER X.

1798.

An ACT to reduce into one the several Acts prescribing the duties of Constables.

Approved January 22, 1798.

Vide Volume I, Chap. 62, and the Notes.

SECTION 1. *BE it enacted by the General Assembly,* That the county courts of each county shall lay off their respective counties into districts, and shall appoint a constable in each district, who shall act under appointment to execute the duties enjoined them by law. Counties to be laid off in districts and constables appointed.

Sec. 2. Every person being appointed a constable, and accepting the same, shall, in his county court, enter into bond, with good and sufficient securities, in the penalty of five hundred dollars, with the following conditions, to wit: "The condition of the above obligation is such, that if the above bounden A. B. as constable of the county shall by himself well and truly collect all officer's fees and dues put into his hands to collect, and account for and pay the same, at such time and in such manner as is directed by law, and shall also well and truly execute and due return make of all process and precepts to him directed, or to him delivered, and pay and satisfy all sums of money and tobacco by him received upon any such process or precepts, to the person or persons entitled thereto, and in all other things shall faithfully and truly execute and perform the said office of a constable according to law, during the time of his continuance therein, then the above obligation to be void; otherwise to remain in full force." Which bond shall be payable to the governor for the time being and his successors, and in their name or that of his successors, any person injured by breach of the condition, may at his costs, prosecute a suit thereon, and recover damages, and be liable to pay costs to the defendant if a verdict or judgment pass in his favor, or the suit be discontinued; and such bond shall not become void upon the first recovery or a dismissal of a first or other suit, but may be put in suit from time to time, by and at the costs of any other person injured, until the whole penalty be recovered in such damages; and that any officer or creditor upon such bond, may, by motion to the county court against the obligor or obligors, giving them ten days notice of such motion, recover judgment for all monies and To give bond and security. Form thereof. Suits may be brought thereon and how.

1798. tobacco collected by such constable and not accounted for to the person or persons respectively entitled to receive them.

Sec. 3. *And be it further enacted,* That every person, before he enters upon the office of a constable, shall in open court give assurance of fidelity to the commonwealth, in the form prescribed by the constitution, and also take the following oath of office, to wit: "I A. B. do swear (or affirm, as the case may be,) that I will do right, as well to poor as rich, in all things belonging to my office of constable, that I will do no wrong to any man, for gift or reward, nor for favor or hatred, and that in all other cases I will truly and faithfully execute the duties of my said office, according to the best of my knowledge and power—So help me God." No constable shall return upon any precept to him directed, that the defendant is not found within his bailiwick, unless such constable shall have been actually at the place of residence of such defendant, and not finding him shall have left a true copy of the precept, or unless such defendant's place of residence is unknown to such constable; and if the defendant cannot be served with the precept by the constable, and shall be a known inhabitant of any other county, the constable shall return the truth of the case, and thereupon the process as to such defendant shall abate.

To take oath, and the form thereof.
How he shall proceed in executing precepts.

Sec. 4. Where any property is taken by the constable by virtue of his office, he may, on the person or persons from whom such property shall be taken, giving a bond and sufficient securities for such property at the day of sale, suffer it to remain in the hands of the debtor; but when such person or persons shall not be able, or shall refuse to give such security, in either case, and the property shall consist of live stock, the constable shall take care of the same, and allowances shall be made him out of the money arising from the sale of such property, to be judged of by the justices to whom execution is returned; and the constable shall be allowed one shilling and three pence for taking of such bond; and there shall not be more than fifteen days between the constable's executing and selling any property taken by virtue of an execution: the constable shall give ten days notice at least of such sales, by advertising at the most public place or places in the neighborhood, of the time and place of such

May take bonds for the delivery of property.
Fee for taking bond.

How he shall sell property taken in execution.

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sale, where the person or persons may render from whom such property is taken.

1798.

Sec. 5. *And be it further enacted*, That where a bond shall be given for the delivery of property, and the same shall not be delivered at the day of sale, agreeable to the tenor of such bond, the constable shall return the bond to the justice who issued the execution; and it shall be the duty of the said magistrate, on the application of the plaintiff or his agent, to issue a new execution on the said bond, on which said new execution the constable shall be entitled to the same fees as he was entitled to on the service of the first execution, and there shall be no security taken.

Proceedings on bonds for delivery of property taken by a constable.

CHAPTER XI.

An ACT to empower Securities to recover Damages in a summary way.

Approved January 16, 1798.

This is copied from an act of 1786, of Virginia. Note.—A little difference of phraseology in the 2nd and 3rd sections.

The court of appeals, in adjudicating on this act, in the case of Tennell vs. Dozier, April 1806, declared that the defendant might make every equitable defence which he could under a plea of non assumpsit, in an action at common law.

SECTION 1. WHEREAS many persons have been reduced from affluence to poverty, by securityships, and it frequently happens that the security or securities, upon bonds or other obligations, their heirs, executors or administrators, have been compelled to pay the whole or the greater part of the debt due upon such bonds or obligations, and in many cases have not been able, by the insolvency of the principal or principals, or a tardy administration of justice, to recover from them or their representatives the whole or any part of the amount of such debts, whereby the said securities have been involved in great inconveniences, and often times in manifest ruin; for remedy whereof,

Preamble.

Sec. 2. *Be it enacted*, That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of record within this commonwealth, against any person or persons, or security or securities, their heirs, executors or administrators, upon any note, bill, bond or obligation, and the amount of such judgment, or any part thereof, hath been paid or discharged by such

Summary remedy for securities on notes or bonds against their principal.

1798.

security or securities, his, her, or their heirs, executors or administrators, it shall and may be lawful for such security or securities, his, her, or their executors or administrators, to obtain judgment by motion against such principal obligor or obligors, his, her, or their heirs, executors or administrators, for the full amount of what shall have been paid by the said security or securities, his, her, or their executors, administrators or assigns, in any court where such judgment may have been entered up against such security or securities, his, her, or their heirs, executors or administrators.

For one security against another, jointly bound with him.

Sec. 3. *And be it further enacted*, That where the principal obligor or obligors have or hereafter shall become insolvent, and there have been or shall be two or more securities jointly bound with the said principal obligor or obligors in any bond, bill, note, or other obligation, for the payment of money or other thing, and judgment hath been or hereafter shall be obtained against one or more of such securities, it shall and may be lawful for the court before whom such judgment was or shall be obtained upon motion of the party or parties against whom judgment hath been entered up as securities aforesaid, to grant judgment and award executions against all and every of the obligors and their legal representatives, for their and each of their respective shares and proportions of the said debt.

Securities not to suffer judgments by confession or default.

Proviso.

Sec. 4. *And be it further enacted*, That no security or securities, his, her, or their executors or administrators, shall be suffered to confess judgment, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves a defendant or defendants to the suit, and tender to the said security or securities, his, her, or their executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending: *Provided always*, That no judgment shall be obtained by motion as aforesaid, unless the party or parties against whom the same is prayed, shall have ten days previous notice thereof.

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CHAPTER XII.

1798.

An ACT providing that Wrongful Alienations of Lands shall be void, so far as they be wrongful.

Approved January 16, 1798.

Copied from an Act of 1785, of Virginia.

SECTION 1. *BE it enacted by the General Assembly,* That all alienations and warranties of lands, tenements and hereditaments, made by any, purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations or warranties, of so much of the right and estates in such lands, tenements or hereditaments, as such persons may lawfully convey; but shall not pass or bar the residue of the said right or estate, purported to be conveyed or assured.

Alienations and warranty of land shall pass only what the person might lawfully convey.

Sec. 2. But if the deed of the alienor doth mention, that he and his heirs be bound to warranty, and if any heritage descend to the demandant, of the side of the alienor, then he shall be barred for the value of the heritage that is to him descended. And if in time after any heritage descend to him by the same alienor, then shall the tenant recover against him of the *seisin* warranted, by judicial writ, that shall issue out of the rolls of the justices before whom the plea was pleaded, to re-summon his warranty, as before has been done in cases where the warrantor cometh into the court, saying that nothing descended from him by whose deed he is vouched.

How far the heirs shall be barred, or bound to recompence the tenant where they have affect.

CHAPTER XIII.

An ACT providing a Mean to help and speed Poor Persons in their Suits.

Approved January 30, 1798.

Copied from an act of 1786, of Virginia.

SECTION 1. WHEREAS it is intended that indifferent justice shall be had and administered to all the citizens of this commonwealth, as well to the poor as the rich, which poor citizens be not of ability nor power to sue according to the laws of this land, for redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other causes: For remedy whereof, in behalf of the poor persons of this

Preamble.

1793. land not able to sue for their remedy after the course of the law,

Poor persons
may sue out
writs, &c. with-
out paying
therefor.

Sec. 2. *Be it enacted by the General Assembly,* That every poor person who shall have cause of action against any person within this commonwealth, shall have, by the discretion of the court before whom he would sue, writ or writs original, and writs of *subpoena*, according to the nature of his cause, nothing paying for the same; and that the said court shall direct their clerk to issue the necessary process, shall assign to him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit to be had and made, who shall do their duties without any reward for their counsels, help and business in the same.

CHAPTER XIV.

An ACT concerning Attornies.

Approved January 22, 1793.

See the prelection to Chap. 245, of Volume I.

Preamble.

WHEREAS it is represented to the general assembly, that a law now exists in the State of Tennessee and North-Western Territory, which enacts, that no person coming into said State or Territory, with an intention to practice law as an attorney, shall be admitted to practice as such, unless he shall have previously resided one year in said State or North-Western Territory; and whereas great inconvenience has arisen, and as that reciprocity which ought to prevail between all civilized States is hereby impaired,

Regulations
concerning at-
tornies of Ten-
nessee.

Sec. 1. *Be it enacted,* That until the said law now in force in the said State of Tennessee and Territory, is repealed, no attorney, who is a citizen of said State and Territory, and who does not become a citizen of this State, obtain a license according to law, and reside therein twelve months, shall be permitted to practice as an attorney in any of the courts within this commonwealth.

Penalty for
breach of this
law.

Sec. 2. *Be it further enacted,* That any attorney or attornies at law or in fact, who do or shall presume to practice contrary to this act, shall, for every such offence, each, forfeit and pay the sum of fifty pounds, one half to the informer, and the other to the use of the commonwealth; to be recovered by bill, plaint or information,

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in any of the courts of quarter sessions or district courts within whose jurisdiction the offence shall be committed.

1798.

This act shall commence and be in force from and after the passage thereof.

CHAPTER XV.

An ACT providing that Actions Popular prosecuted by Collusion, shall be no bar to those which be pursued with Good Faith.

Approved January 30, 1798.

Copied from an act of 1786, of Virginia.

SECTION 1. *BE it enacted by the General Assembly,* That if any person hereafter sue with good faith, any action popular, and any defendant in the same action, plead any manner of recovery by action popular, in bar of the said action; or that he, before that time, barred any plaintiff in any action popular, then the plaintiff in the action taken with good faith, may aver that the said recovery in the said action popular, was had by *covin*; or else may aver that the said plaintiff was barred in the said action popular, by *covin*. Then if after the said collusion or *covin*, so averred, be lawfully found, the plaintiff in that action sued with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like manner and effect as if no such action aforesaid had been had. *Provided always,* that no plaintiff be in any wise received to aver any *covin* in any action popular where the point of the same action, or else the *covin* or collusion shall have been once tried, or lawfully found with the plaintiff, or against him, by trial of twelve men, and not otherwise. If the prosecutor of an action or information for the recovery of any penalty, and not wholly appropriated to the use of such prosecutor, shall compound with the offender to direct such suit or information to be discontinued, unless it be by leave of the court wherein the said suit or information shall be depending, such prosecutor shall be liable for so much of the penalty to the commonwealth, or any other, as they would have been entitled to if the defendant had been convicted.

Plaintiff to plea of recovery in a former action, may reply that it was had by *covin*.

Penalty for compounding actions, &c.

JANUARY SESSION,

1798.

CHAPTER XVI.

An ACT concerning the Owners of Salt and Salt-Petre Works.

Approved January 30, 1798.

Amended, November 1798, Chap. 113, and repealed, in part, in 1800, Chap. 276.

Preamble.

WHEREAS it is represented that considerable loss and inconvenience has arisen to citizens of this commonwealth, residing near the salt and salt-petre works therein, owing to the carelessness of the owners or occupiers of such works, in not enclosing their salt-petre water, brine or bitter water, from the access of stock; for remedy whereof,

Works shall be enclosed.

Be it enacted by the General Assembly, That the owners and occupiers of each salt and salt-petre works within this state, shall keep the same enclosed, so as to prevent cattle, and every other kind of stock, that may receive injury by drinking the salt-petre water, brine or bitter water, from having any access thereto. And every person, owner or occupier of any salt or salt-petre works within this state, failing to enclose and secure his works from being accessible by cattle, or any other kind of stock, that may be injured by drinking the salt-petre water, brine or bitter water, shall be liable to the action of the party injured by such neglect, for the value of any cattle, or stock of any other kind, that may be killed by drinking the same, to be recovered by action, in like manner as sums of like dignity are recoverable by law.

Penalty for failure therein.

This act shall commence and be in force from the first day of June next.

CHAPTER XVII.

An ACT for appointing Public Notaries.

Approved January 26, 1798.

Copied from an act of 1784, of Virginia.

Preamble.

WHEREAS it will be for the ease and convenience of the inhabitants of this commonwealth, and all others trading hither, that public notaries shall be appointed,

Public notaries appointed,

Sec. 1. *Be it therefore enacted,* That the governor for the time being, is hereby authorised and required to nominate, and by and with the advice and consent of the senate, appoint so many notaries public, as to him shall

seem necessary; and upon the death, resignation or removal of any such notaries public, to nominate and appoint others in his or their room; which said notaries public shall hold their respective offices during good behaviour, and shall use and exercise the said office of notary public for such places, and within such limits and precincts, as by their commissions shall be directed, to whose protestations, attestations and other instruments of publication, due credence is hereby given: *Provided nevertheless*, That every notary public shall, previous to his executing the said office, give bond, in the county court of his precinct, to the governor for the time being, in the penalty of fifteen hundred dollars, conditioned for the due discharge of his said office, and shall, in the county court of his precinct, take the oath of fidelity to this commonwealth, and also an oath that he will, without favor or partiality, honestly, diligently and faithfully discharge the duties of a notary public.

1798.

Who shall give bond.

Sec 2. *Be it further enacted*, That every public notary shall and may demand and receive for every attestation, protestation, and all other instruments of publication, under his seal of office, the sum of eighty-three cents, and no more; and for recording in a book to be kept for that purpose, each attestation, protestation, and all other instruments of publication, the sum of eighty-three cents, and no more.

Their fees.

CHAPTER XVIII.

An ACT to reduce into one the several Acts for ascertaining the Salary of the Officers of Civil Government.

Approved January 22, 1798.

SECTION 1. *Be it enacted by the General Assembly*, That the several officers hereinafter-mentioned, shall for their respective services, be entitled to the following salaries annually, to commence from the acceptance of their several appointments, and actually qualifying themselves according to law, to be paid out of the public treasury, in quarterly payments, after the same shall have been audited according to law.

Salaries to public officers when to commence.

How payable.

To the governor or chief magistrate, the sum of four hundred pounds.

Salary of different officers.

To the judges of the court of appeals, each two hundred pounds.

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To the judges of the district courts, each one hundred and fifty pounds.

To the secretary, two hundred pounds.

To the treasurer, two hundred and fifty pounds.

To the auditor, two hundred and fifty pounds.

To the register, two hundred and fifty pounds.

To the attorney-general, one hundred pounds.

To the attorneys for the commonwealth in the district courts, thirty pounds each.

Auditor's duty
in issuing war-
rants.

Sec. 2. The auditor of public accounts shall issue warrants for the quarterly payments of the salaries of every person entitled thereto as the same shall become due, on the last day of March, June, September and December annually, expressing in such warrant, that the same is in whole or in part of the first, second, third and fourth quarterly salary, for the year in which it became due. And where any person shall be appointed to any office, his salary due on the fractional part of the quarter in which he was appointed, shall be settled, and thereafter his salary shall become due as aforesaid.

Allowance to
justices of quar-
ter sessions.

Sec. 3. The justices of the courts of quarter sessions shall receive for their services, twelve shillings per day each, for every day they shall respectively sit in the said courts, to become due on the tenth day of June and November annually; for which sum, on a certificate from the clerk of the said court, of the number of days they have attended, they shall receive a warrant from the auditor, which shall be paid at the public treasury.

CHAPTER XIX.

An ACT to repeal an act, entitled, "an act altering the time of meeting of the General Assembly."

Approved January 26, 1798.

SECTION 1. *Be it enacted by the General Assembly,* That the act, entitled, "an act altering the time of meeting of the general assembly," shall be, and the same is hereby repealed; and that the stated meeting of the general assembly, shall be on the first Monday of November, annually, as heretofore.

This act shall commence and be in force from and after the end of the present session of the general assembly.

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CHAPTER XX.

1798.

An ACT against Usury.

Approved January 26, 1798.

Connected with this subject is a provision of an act of 1786.

[SESSION ACTS, 1786, Chap. 55.]

"Every broker, solicitor, or driver of bargains, who shall hereafter directly or indirectly, take or receive more than the rate or value of five shillings, for brokerage, or soliciting the loan or forbearance of one hundred pounds for a year, or above one shilling for making or receiving the bond or bill, for such loan or forbearance, or for any counter-bond or bill, concerning the same, shall forfeit for every offence, twenty pounds to the commonwealth and informer, to be recovered and divided, as herein before is mentioned."

This has been law for ages.

SECTION 1. *BE it enacted by the General Assembly,*

That no person shall hereafter upon any contract, take di- Rate of interest
rectly or indirectly, for loan of any money, wares or at 6 per cent.
merchandise, or other commodity, above the value of
six pounds for the forbearance of one hundred pounds
for a year, and after that rate, for a greater or a lesser
sum, or for a longer or shorter time; and all bonds,
contracts, covenants, conveyances, or assurances here-
after to be made, for payment or delivery of any money
or goods so to be lent, on which a higher interest is re-
served or taken than is hereby allowed, shall be utterly
void.

Sec. 2. Any borrower of money or goods, may ex- Lender may be
hibit a bill in chancery against the lender, and compel compelled to
him to discover upon oath, the money or thing really disburse the mo-
lent; and all bargains, contracts or shifts, which shall ney or thing lent
have passed between them relative to such loan, or the
re-payment thereof, and the interest or consideration for
the same; and if thereupon it shall appear that more
than lawful interest was reserved, the lender shall be
obliged to accept his principal money without any inter-
est or other consideration, and pay costs, but shall be
discharged of all other penalties.

CHAPTER XXI.

*An ACT authorising the establishment of Fire Com-
panies.*

Approved January 23, 1798.

Copied from an act of 1787, of Virginia.

WHEREAS the danger to which the several towns
in this commonwealth are exposed from fire, is chiefly

1798. } occasioned by the want of fire companies duly organized, and it is necessary that such companies be incorporated, in order to give them their full effect—

Fire companies
authorized.

Their privi-
leges.

Provido.

Sec 1. *Be it enacted*, That it shall be lawful for any number of persons, resident within any town or corporation in this commonwealth, exceeding forty persons, to form themselves into a company, or companies, for the purpose of extinguishing fire; who, on having their names and subscriptions recorded in the court of the county or corporation where they reside, are hereby authorised to make such rules and regulations, as to a majority of the said company or companies, may seem proper and necessary for the procuring of engines and other necessary implements for working the said engines and exercising the companies raised; and that all fines and forfeitures for non-attendance or delinquency, imposed by the said regulations, not exceeding five pounds, shall be recoverable before a single magistrate, on proof of such delinquency; which said fines and forfeitures shall be applied to the purpose of their institutions.

Sec. 2. *Provided always*, That all bye laws or rules to be made by virtue of this act, which are contrary to the constitution or laws of this commonwealth, shall be null and void.

CHAPTER XXII.

An ACT to reduce into one the several acts for regulating the Inoculation of the Small-Pox, within this Commonwealth.

Approved January 30, 1798.

Penalty for
bringing the
small-pox in-
to this state.

SECTION 1. *BE it enacted by the General Assembly*, That if any person or persons whatsoever, shall wilfully or designedly presume to import or bring into this commonwealth, from any country or place whatever, the small-pox, or any variolous or infectious matter of the said distemper, with a purpose to inoculate any person or persons whatsoever, or by any means to propagate the said distemper within this commonwealth, he or she so offending shall forfeit and pay the sum of one thousand pounds for every offence so committed; one moiety thereof shall be to the informer, and the other moiety to the use of the poor of the county where the offence shall be committed, to be recovered with costs, by ac-

tion of debt, bill, plaint or information, in any court of record within this commonwealth.

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And forasmuch as the inoculation for the small-pox, may, under peculiar circumstances, be not only a prudent but necessary means of securing those who are unavoidably exposed to the dangers of taking the distemper in the natural way, and for this reason it is judged proper to tolerate it under reasonable restrictions and regulations,

Sec. 2. *Be it therefore enacted*, That if any person shall think him or herself, his or her family, exposed to the immediate danger of catching the said distemper, such person may give notice thereof to the sheriff of any county, or to the mayor or chief magistrate of any city or corporation, and the said sheriff, mayor or chief magistrate, shall immediately and without loss of time, summon all the acting magistrates of the said county, city or borough, to meet at the most convenient time and place in the said county, city or borough; and the said magistrates, or such of them as shall be present, being assembled, shall consider whether upon the whole circumstances of the case, inoculation may be prudent or necessary, or dangerous to the health and safety of the neighbors; and thereupon either grant a license for such inoculation, under such restrictions and regulations as they shall judge necessary and proper, or prohibit the same, as to them, or a majority of them, shall seem expedient.

License for inoculation, from whom and in what case to be obtained.

Sec. 3. Any person having first obtained in writing (to be attested by two magistrates,) the consent of a majority of the house-keepers residing within three miles, and not separated by a river, creek or marsh a quarter of a mile wide, and conforming to the following rules and regulations, may inoculate or be inoculated for the small-pox, either in his or her own house, or at any other place. No patient in the small-pox shall remove from the house where he or she shall have the distemper, or shall go abroad into the company of any person who hath not before had the small-pox, or been inoculated, or go into any public road, where travellers usually pass, without retiring out of the same, or giving notice upon the approach of any passenger, until such patient hath recovered from the distemper, and hath been so well cleansed in his or her person and clothes, as to be

Any person may inoculate, conforming to certain regulations

1798.

perfectly free from infection, under the penalty of forty shillings for every offence, to be recovered, if committed by a married woman, from her husband ; if an infant, from the parent or guardian ; and if a servant or slave, from the master or mistress.

The house at which the small pox is, to be advertised.

Under penalty.

Regulations to prevent the spreading of the infection.

Further regulations of the like nature.

Provision for defraying the expenses attending inoculations.

Sec. 4. Every physician, doctor, or other person undertaking inoculation at any house, shall cause a written advertisement to be put up at the nearest public road or other most notorious adjacent place, giving information that the small-pox is at such house, and shall continue to keep the same set up so long as the distemper or infection remains there, under the penalty of forty shillings for every day the same is omitted or neglected, to be paid by the physician, or doctor, if the offence shall be committed when he is present, or by the master, mistress, manager or principal person of the family respectively, if the offence is committed in the absence of the physician or doctor. Every physician, doctor, or other person undertaking inoculation at any public place or hospital for the reception of patients, shall before he discharges the patient, or suffer them to be removed from thence, take due care that their persons and clothes are sufficiently cleansed, and shall give such patients respectively, a certificate under his hand, that in his opinion they are free from all danger of spreading the infection, under the penalty of three pounds for every offence ; and every person wilfully giving a false certificate, shall be subject to the penalty of ten pounds.

Sec. 5. If any person who hath not had the small-pox, other than those who have been or intended to be inoculated, shall go into any house, where the small pox then is, or intermix with the patients, and return from thence, any justice of the peace for the county or corporation, on due proof thereof, may by warrant, cause such person to be conveyed to the next hospital where the small-pox is, there to remain until he or she shall have gone through the distemper, or until the physician or manager of the hospital, shall certify, that in his opinion, such person cannot take the same ; and if any person be not able to pay the necessary expences, the same shall be paid by the county.

Sec. 6. And whereas, checking the progress of the said distemper, where it may accidentally break out, or the regulation which may be established for carrying on

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inoculation, may be attended with some expense : *Be it enacted*, That it shall and may be lawful for the justices of any county at the time of laying their levy, and for the mayor, recorder, alderman and common council of any city or borough, at such time as they shall judge most convenient, to levy on the titheable persons in their said county, city or borough, so much tobacco or money as will be sufficient to defray the expences necessarily incurred, for the purposes aforesaid, in any such county, city or borough.

1798.

Sec. 7. If any sheriff, mayor, or chief magistrate, shall upon application to him made in manner aforesaid, refuse or unreasonably delay to summon the magistrates of any county, city or borough, for the purpose aforesaid ; or if any magistrate so summoned shall refuse or neglect to attend accordingly to such summons, every such mayor, sheriff or chief magistrate, shall forfeit the sum of one hundred pounds upon his refusing or neglecting to give such notice, without reasonable excuse, and every other magistrate so refusing or neglecting, without reasonable excuse, shall also forfeit and pay the sum of five pounds to the person aggrieved.

Penalty on certain officers neglecting their duty under this act.

Sec. 8. If any person or persons shall inoculate or procure inoculation for the small pox, to be performed within this commonwealth, without obtaining a license or consent to inoculate in the manner herein before directed, or shall not conform to the rules and regulations prescribed by such justices, he, she or they, shall forfeit and pay, respectively, for every such offence, the sum of one hundred pounds, one moiety thereof shall be to the informer, and the other moiety to the overseers of the poor, in the county where such offence shall be committed, for the use of the poor of the said county, to be recovered with costs, by action of debt, bill, plaint or information, in any court of record in this commonwealth, and moreover it shall and may be lawful for any justice of the peace upon information given to him upon oath, to issue his warrant against any person so offending, and upon sufficient proof before him made, to cause such offender to give security in such reasonable penalty as such justice shall think fit, for his or her good behaviour ; and upon failure to give such security, to commit him or her to the jail of his county, there to be confined until such security shall be given.

Penalty for inoculating without license, &c.

1798. **Sec. 9.** Every person wilfully endeavoring to spread or propagate the small-pox, without inoculation, or by inoculation in any other manner than is allowed by this act, in special cases, shall be subject to the penalty of five hundred pounds, or suffer six months imprisonment without bail or mainprize.

Penalty for wilfully spreading the infection.

Sec. 10. All the penalties inflicted by this act, may be recovered with costs, by action of debt or information, in any court of record, where the sum exceeds five pounds, and where it is under, or amounts to that sum only, before any justice of the peace, of the county where the offence shall be committed; and where they are not hereby appropriated otherwise, shall be one half to the informer, and the other half to the commonwealth, or the whole to the commonwealth where prosecution shall be first instituted on the public behalf alone.

Repealing clause.

All acts, and so much of any acts of general assembly as contain any thing contrary to this act, shall be, and the same are hereby repealed.

CHAPTER XXIII.

An ACT concerning Waste.

Approved January 23, 1798.

SECTION 1. *BE it enacted by the General Assembly,* That if any tenant by the courtesy, tenant in dower, or otherwise, for term of life or years, shall commit waste during their several estates, or terms, of the houses, woods, or any other thing belonging to the tenants so held, without special license in writing so to do, they shall be subject, respectively, to an action of waste, and shall moreover, lose the thing wasted, and recompence the party injured, at three times the amount at which the waste shall be assessed.

Penalty for the commission of waste by tenants

Tenant aliene but remain in possession, he is liable to action of waste.

Sec. 2. In case any of the said tenants shall *aliene* their estate, and notwithstanding retain possession of the same, and commit waste, he or she in reversion shall be entitled to his action of waste: and likewise recover against them, the place wasted, and treble damages.

Such action may be brought by one tenant in common against another.

Sec. 3. If any one tenant in common, shall commit waste of the estate held in common, he shall be subject to an action of waste, at the suit of the other tenant or tenants in common.

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Sec. 4. An action of waste shall be maintainable by the heir, whether within or of full age, for waste done in the time of his ancestors, as well as in his own time.

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And by the heir for waste done in his ancestor's lifetime

Sec. 5. If tenant for life commit waste, and he in the reversion brings his action of waste, and dieth before judgment, his heir may bring an action of waste for the same.

Sec. 6. If a guardian shall commit waste of the estate of his ward, such ward, when he attains his full age, shall have his action to recompence him for the injury.

And by a ward against his guardian.

Sec. 7. The process in an action of waste, shall be summons, attachment, and distress; and if the defendant appears not upon the distress, the waste shall, nevertheless, be enquired of by a verdict of a jury, and the court proceed to judgment according to the directions of this act.

Proceedings in actions of waste

Sec. 8. After the commencement of any suit in any court of this commonwealth, the tenant shall have no power to commit waste or *estrepement*, of the land in demand, whilst such suit is depending; and if he does, the sheriff shall be commanded to keep the same, at the suit of the plaintiff.

After action brought for the land, tenant shall not commit waste.

All and every statute and statutes, act and acts, clause or clauses thereof, within the purview of this act, (except as hereinafter provided) shall be, and are hereby repealed: *Provided always*, That nothing in this act contained, shall be construed to repeal the said statutes or acts, for so much of them, as relates to any offence within the purview thereof, committed or done, before the commencement of this act.

Repealing clause.

Provide.

CHAPTER XXIV.

An ACT to reduce into one the several Acts concerning Elections.

Approved January 26, 1798.

See the prelection to Chap. 6, of Volume I.

CHAPTER XXV.

An ACT authorising a Lottery.

Approved January 22, 1798.

This act authorised raising 1500 dollars for opening, improving and causewaying two streets in Frankfort. If the lottery was not drawn in twelve months from the passage of the act, the purchasers of tickets were to receive the money from the managers.

JANUARY SESSION,

1798.

CHAPTER XXVI.

An ACT authorising a Lottery in the Town of Washington, and for other purposes.

Approved January 26, 1798.

The first, second and third sections of this act, authorised the raising of 1000 dollars, for the purpose of introducing water into the town, from the public spring; or, if that should be found impracticable, the nett proceeds to be laid out in the sinking of wells. If the lottery was not drawn in 18 months, purchasers of tickets had a right to demand a return of their money.

The rest of the act is as follows:

AND whereas some inconvenience arises to the said town of Washington, from the number and manner of electing the trustees thereof:

Regulations respecting trustees of said town.

Sec. 4. *Be it enacted by the General Assembly*, That it shall and may be lawful for the freeholders in the said town, to elect and choose annually on the first Saturday in April, twelve trustees; which election shall be conducted by one of the acting trustees, to be appointed by the board for that purpose, and held at the court-house. Ten days previous notice thereof shall be publicly advertised by the chairman of the late or then acting trustees; and the return of the persons so elected, shall be made to the clerk of the board, which shall be recorded in their books. No person shall be capable of being elected, or acting as trustee for said town of Washington, who is not a freeholder and actually residing within the limits thereof. Vacancies shall be supplied by elections made in the manner herein before directed, on a day to be appointed by the remaining trustees, and return thereof made in manner aforesaid.

Their powers.

Sec. 5. *And be it further enacted*, That all the powers heretofore enjoyed by the trustees of the said town of Washington, shall devolve on and be exercised by those elected under this act.

This act shall commence and be in force from the passage thereof.

CHAPTER XXVII.

An ACT authorising Trustees to sell the Lands of Maurice Nagle, deceased, for the benefit of his Creditors.

Approved January 26, 1798.

This act appointed trustees to sell Nagle's estate, pay his debts, and place the balance of the money in the treasury.

CHAPTER XXVIII.

1798.

An ACT authorising the Sale of the Lands of Jesse Morgan, deceased, for the benefit of his Creditors.

Approved January 30, 1798.

Morgan died intestate, indebted, with but little personal, but some real property. This act empowered his administrators to sell and convey his lands for the payment of his debts.

CHAPTER XXIX.

An ACT appointing Commissioners to sell part of the Land of Angus Cameron.

Approved January 22, 1798.

Archibald and John Cameron were authorized to sell enough of Angus Cameron's lands to pay his debts, and to perfect his titles to other lands. The law is silent as to the occasion for passing such an act.

CHAPTER XXX.

An ACT for the better regulation of Bairdstown.

Approved January 30, 1798.

WHEREAS it is represented to the general assembly, that the inhabitants of Bairdstown sustain great inconvenience and injury from swine being raised or suffered to run at large in said town; for remedy whereof, Preamble.

Sec. 1. *Be it enacted by the General Assembly,* That any citizen of said town raising and suffering the swine to run at large within said bounds, shall forfeit and pay the sum of two dollars, for each head of swine so raised and suffered to run at large; which forfeitures shall be collected in the name of the trustees of said town, and be recovered in the same manner sums of like amount are recoverable by law; and shall be applied by said trustees to the keeping the streets of said town in repair. Penalty for suffering swine to run at large.

Sec. 2. *And be it further enacted,* That whosoever shall be guilty of running or racing horses in the streets, or shooting at a mark within the limits of the town aforesaid, he shall forfeit and pay the sum of six shillings; which said forfeiture shall be collected and applied in the same manner as the forfeitures above mentioned. How collected and applied.

This act shall commence and be in force from and after the first day of April next.

1798.

CHAPTER XXXI.

An ACT concerning the Inspectors of Tobacco at the Rapids of the Ohio.

Approved January 26, 1798.

Preamble. WHEREAS it is represented to the general assembly, that the tax imposed by law, of one dollar per hogshead, on tobacco exported from this state, does not produce a sum sufficient to pay the salaries of the inspectors at the inspection at the rapids of Ohio, and no provision is made by law for any deficiency therein, and it is but just and reasonable that public servants should receive an adequate compensation for their services : and whereas the inspectors at said ware-house are willing to continue their services, provided the emoluments arising from said tax can be secured to them for ten years, calculating upon a reasonable increase thereof :

Be it enacted, That the inspectors at the rapids of Ohio shall have and enjoy as a compensation for their services, (for and during the term of ten years from the passage of this act, if they so long live and behave well) the sum of four shillings and six pence per hogshead, for every hogshead of tobacco which shall be inspected at the said ware-house ; and that the owners of the said ware-house shall receive, for the use of the same, one shilling and six pence per hogshead ; which several sums shall be paid out of the tax of one dollar per hogshead, now established by law on the exportation of tobacco, any law to the contrary notwithstanding.

Certain compensation allowed said inspectors.
Rent to the owners of the ware-house.
Now paid.

This act shall commence and be in force from and after the passage thereof.

CHAPTER XXXII.

An ACT for the relief of John Funk.

Approved January 22, 1798.

John Funk's wife, Susanna, had deserted him, and obstinately continued in an adulterous, unlawful and wicked life ; wherefore, this act authorises a divorce.

CHAPTER XXXIII.

An ACT concerning the marriage of Elizabeth Jones.

Approved January 22, 1798.

This act authorises Elizabeth Jones to be divorced from her husband, if he shall be found by a jury to have deserted her and lived in open adultery with another woman, in any other state except Kentucky !

CHAPTER XXXIV.

1798.

An ACT to amend an act entitled "an act to amend and reduce into one, the several acts establishing a Permanent Revenue."

Approved February 12, 1798.

See the preface to Chap. 10, of Volume I.

SECTION 1. *BE it enacted by the General Assembly,* Longer time gi-
That the act passed the 14th day of December, 1796, ven to enter
entitled "an act giving further time to enter lands with lands with the
the auditor and commissioners," which expired the 14th auditor.
of December last, shall be and the same is hereby re-
vived, and shall continue in force until the first of De-
cember next; and that the titles of no persons whatsoe-
ver to lands within this commonwealth, shall be impair-
ed because they have not listed in conformity to the
said act.

Sec. 2. Where the lands of a non-resident have been Where lands
listed in an improper class, or twice listed and paid for, have been im-
under the same claim, and satisfactory proof made, properly classed
thereof to the auditor, it shall be his duty to place such it, where taxes
lands in their proper class; and where such non-resident have been paid.
hath paid into the treasury the taxes accruing on such
land so improperly classed, or twice listed and paid for
under the same claim, the auditor shall, upon like proof,
issue his warrant to such non-resident or his agent, for
the amount so improperly paid, which shall be receiva-
ble by any sheriff in any future taxes due from the said
non-resident, or from any other person.

Sec. 3. Where the lands of a non-resident have been How, where the
listed in an improper class, and satisfactory proof made taxes have not
thereof as aforesaid to the auditor, and the taxes thereon been paid.
have not been paid, it shall be the duty of the auditor,
after placing the said lands in their proper class, to settle
with the said non-resident for the amount of the taxes
due on said lands, when so properly classed. And
where any non-resident hath paid the tax for 1792 and
and for 1793, at two shillings per hundred acres, he
shall be entitled to a credit on the settlement of any sub-
sequent taxes with the auditor, for the difference agree-
ably to the class in which such land shall be classed, ac-
cording to the revenue laws enacted posterior to said
years.

1798. *Sec. 4. And be it further enacted,* That all taxes for the year 1797, to be collected in the year 1798, agreeably to the said recited act, shall be reduced one-third part, and the sheriffs and collectors of the public revenue, shall be governed accordingly; excepting the tax upon billiard tables, for each of which, there shall be paid annually the sum of twenty pounds, in lieu of the tax heretofore imposed on them, to be collected as other taxes.

Taxes of 1797 reduced one-third. Exceptions. Taxes on billiard tables.

Billiard tables to be listed with the county clerk, & when. *Sec. 5. And be it further enacted,* That every person keeping a billiard table, shall list the same with the clerk of his county, on the tenth day of March, if it be not Sunday, and in that case on the next day. And the clerk of every county within this state, shall, on or before the first day of July, in each year, transmit to the auditor of public accounts, and the sheriffs of his county, a list of the owners' names, and number of all billiard tables so entered; and shall enter the same in some book of record in his office, and give a certificate thereof to the owner, which shall be deemed a license; for all which service he shall receive the sum of three shillings, to be paid on entry by the owner. And every person who shall set up a billiard table after the tenth day of March in any year, shall, before he shall suffer the same to be played upon or used, list the same with the clerk in manner aforesaid, and shall pay the same tax as if such billiard table had been entered and set up on the said tenth day of March in the same year; and the clerk of each county shall within four weeks after the entry of such billiard table, if it happen after the first day of July, transmit a list thereof as aforesaid to the sheriff of his county, and the auditor of public accounts; and the sheriff shall collect and account for every such table as aforesaid, for the full tax, until the tenth day of March next succeeding such entry: and the owner of a billiard table, who shall set up the same, and suffer it to be used or played on, without having entered the same agreeably to this act, shall forfeit and pay the sum of one hundred dollars for every such offence, to be recovered by motion, bill, plaint or information, by any person who shall sue for the same, and in any court of record having cognizance of sums of like amount; one half to the informer, and the other half to be applied towards lessening the county

Clerk's duty.

His fee.

How to proceed when the table is set up after the 10th March.

Penalty for suffering a table to be used before it is entered.

How to be recovered and applied.

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levy, and accounted for by the sheriff as other levies are directed by law to be accounted for.

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Sec. 6. *And be it further enacted*, That should the sheriff of any county neglect or refuse to give the bond required by the before recited act, for the due and faithful paying and accounting for all taxes and arrearages of taxes, a collector of the taxes shall be appointed for that county by the county court, under the conditions and regulations established in the said recited act.

In what cases & how a collector of the taxes to be appointed.

CHAPTER XXXV.

An ACT for the safe-keeping of Prisoners committed under the authority of the United States into any of the Jails of this Commonwealth.

Approved February 3, 1798.

Copied from an act of 1789, of Virginia, and re-enacted by Kentucky in 1800, chap. 267.

SECTION 1. *BE it enacted by the General Assembly*, That it shall be the duty of the keeper of every jail in every district or county within this commonwealth, to receive into his custody, any prisoner or prisoners who may be from time to time committed to his charge, under the authority of the United States, and to safe keep every such prisoner or prisoners, according to the warrant or precept of commitment, until he or they shall be discharged by the due course of the laws of the United States.

Jailors to receive prisoners of the U. States.

Sec. 2. The keeper of every jail aforesaid, shall be subject to the same pains and penalties for every neglect or failure of duty herein, as he would be subject to by the laws of this commonwealth, for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

Penalty on them for neglect of duty.

Sec. 3. *Provided always*, That the United States do pay or cause to be paid for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner that shall under their authority be committed there-to, during the time such prisoner shall be therein confined; and moreover do support such of the said prisoners as shall be committed for offences.

U. States to pay for the use of the jails, &c.

1798.

CHAPTER XXXVI.

An ACT prescribing the mode of obtaining Writs of Certiorari, declaring the cases in which those Writs shall issue, and for other purposes.

Approved February 7, 1798.

Copied from some Virginia Acts, *mutatis mutandis*.

Preamble.

WHEREAS various opinions have heretofore been entertained respecting the manner of obtaining writs of *certiorari*, and the cases wherein those writs should issue; and whereas from a late decision of the general court of this state, consequences are feared tending to impede the decision of land questions, which were intended to be the principal subject of jurisdiction in the several district courts within this commonwealth: for remedy whereof, and declaring the law on the subjects aforesaid,

Mode of obtaining writ of *certiorari*.

Sec. 1. *Be it enacted by the General Assembly*, That the party desiring such writ or writs, shall, by petition to any one judge of the district courts, set forth the reason of his desiring such writ or writs, and shall make oath before a magistrate of the truth of the allegations of his petition, and then the said judge may under his hand order and award such writ or writs to the party praying the same, and the clerk of the district court from which such writ or writs shall issue, shall carefully file such petition and affidavit in his office, and shall take bond from the petitioner in such penalty and with such security as shall be directed by the said judge awarding such writ or writs, conditioned for satisfying and paying all such sum or sums of money and costs, as shall be adjudged to the adverse party in the cause or causes so to be removed, and thereupon the clerk may issue such writ or writs, but not otherwise.

What case writ not to be granted.

Sec. 2. No writ or writs of *certiorari*, whatsoever, shall be granted where the matter in dispute was not originally cognizable in the district courts; and if any cause or causes be removed or stayed by any such writ or writs, and afterwards the same cause or causes shall be remanded or sent back again by any writ of *procedendo*, or other writ whatsoever, such cause or causes shall never afterwards be removed or stayed before judgment by any writ or writs to be sued forth from any of the offices of the district courts.

Sec. 3. And to prevent obtaining any writ or writs of *certiorari* by surprize, the party praying such writ in any civil cause, shall give notice to the adverse party of the time and place of his moving or petitioning for such writs or writs, at least ten days before such motion or petition: and no such writ shall at any time be granted, without producing an affidavit of such notice. 1798.
To prevent obtaining a writ by surprize.

Sec. 4. No writ or writs of *certiorari* shall be received or allowed by the justices of any inferior court, or to whom any such writ or writs shall be directed or delivered after issue or *demurrer* joined in the cause or causes depending in such courts, and intended to be removed by such writ or writs, but they may and shall proceed in such cause or causes, as though no such writ had been sued forth or delivered to them or any of them. Not allowed by inferior justices.

Sec. 5. No cause or causes shall be removed by any writ or writs of *certiorari* from any inferior court to any district court within this commonwealth, unless the petition for such writ or writs shall state (and be supported as aforesaid by the affidavit of the petitioner or petitioners) that he, she or they is or are advised, and doth verily believe, that the point on which the cause will probably be determined, is new and difficult, and has not been judicially decided by any of the superior courts within this commonwealth, or that the justices or some one justice of the inferior court before which such suit or suits so desired to be removed is depending, is interested or prejudiced, or that the sheriff, or coroner (in case the sheriff be a party) is interested or prejudiced, or that the adversary of the petitioner has undue influence over the minds of the citizens of the county where such suit or suits is depending, or that the petitioner is so odious that he does not expect a fair verdict, or that his defence is odious though legal. Statement in petition to obtain a writ.

Sec. 6. No writ or writs of *certiorari* shall be granted to a plaintiff in any cause whatsoever. Not allowed to plaintiff.

Sec. 7. No writ or writs of *certiorari* shall be received or allowed in any inferior court, when granted to a defendant, unless the said defendant shall first pay to the clerk of the court, for the use of the plaintiff, all legal costs accruing to the plaintiff in such inferior court. Writ now issued.

Sec. 8. *And be it further enacted,* That in all suits not cognizable in the district courts of this commonwealth, where either of the parties shall conceive that he, she or In what cases venire changed.

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The mode of
doing it.

Mode of pro-
ceedings when
changed.

Penalty for
making a false
oath to peti-
tions.

Provido,

they will not receive a fair trial in the court where such suit is depending, owing to the interest or prejudice of any justice or justices of the said court, or to the interest or prejudice of the sheriff or coroner, where the sheriff or coroner is a party, or to the undue influence of his, her or their adversary or adversaries ; or to the odium which attends the said party ; or that his, her or their cause of action or defence, though legal, is odious ; it shall and may be lawful for the party so suspecting he, she or they will not receive justice in the court then sustaining the said suit, owing to the said causes, or any of them, at any time to petition a judge of the district courts for a change of *venire* for the said cause ; which petition shall distinctly set forth the cause why such fear is entertained, and be supported by the affidavit of the petitioner or petitioners. And it shall and may be lawful for said judge, on receipt of said petition, supported by the affidavit aforesaid, under his hand, to award a change of *venire*, and order the clerk of the court before whom the suit is then depending, to send forward the papers in the said suit (by some meet person, to be employed by the said clerk) to such court, having jurisdiction in similar cases, as the said judge may direct ; and the clerk of such court shall receive the said papers, giving a receipt therefor, and docket the said suit in order, with the other causes ; and the court to which the said papers are sent, shall be, and they are hereby vested with full power, authority and jurisdiction, to award *subpoenas* for witnesses, to enforce their attendance, to grant commissions for taking depositions, to hear and determine the said controversy, to award execution, and to do all other matters and things relative thereto, which the court from which the said cause was removed might or could legally have done.

Sec. 9. And if any person or persons making oath to the truth of the allegations in his, her or their petition contained, either for a writ of *certiorari* or change of *venire*, shall take a false oath, and be thereof convicted, he, she or they shall be adjudged guilty of perjury, and suffer the pains and penalties thereof: *Provided* that the prosecution of such offence be commenced within twelve months after such offence be committed ; and provided also, that no justice, sheriff or coroner, charged as aforesaid, or adversary in the said cause, shall be admitted as a witness against the prisoner in said prosecution.

Sec. 10. The expenses attending the removal of such suit, shall be paid by the party praying the same, and the person who shall be entrusted to convey the said papers to the clerk of the county to which they shall be sent, shall and may receive the sum of five cents for each mile he must necessarily travel in going to and returning from the said clerk's office, which sum shall be paid into the hands of the clerk of the court where the said suit originated, before the papers shall be delivered out of his office.

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Party praying a change to pay the costs of removal.

Allowance for removing papers.

Sec. 11. The clerk of the court before whom the suit originated, shall be answerable for the fidelity of the person whom he shall employ to transport the papers from his office to the office of the clerk of the court to which they shall be sent; but shall not be answerable for accidents not arising from neglect.

Clerk responsible in certain cases.

Sec. 12. The *venire* in no case shall be changed, unless the party praying the same shall deposit the order of the judge for removing the same, together with the petition and affidavit aforesaid (which shall carefully be preserved by the said clerk) and also the necessary expenses attending the removal, with the clerk having the custody of the said papers, at least thirty days before the court to which the said suit shall be set for trial.

At what time may the *venire* be changed.

Sec. 13. Nothing in this act contained shall be construed to justify the remanding of any suit or suits heretofore brought up by any writ of *certiorari* to any district court; but the said district courts shall have power to hear and determine the same, any law to the contrary notwithstanding.

Causes already removed not remanded.

This act shall commence and be in force from and after the passage thereof.

CHAPTER XXXVII.

An ACT for the better regulation of Towns.

Approved February 7, 1798.

See the prelection to Chap. 269, of Vol. I.

SECTION 1. BE it enacted by the General Assembly, That if any person shall be guilty of running or racing a horse or horses, or shooting at a mark, within the limits of the inlots or streets in any town within this state, established by law, every person so offending shall for-

Penalty for racing or shooting at marks in towns.

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feit and pay for every such offence, the sum of three dollars, to be collected in the name of the trustees respectively, recoverable by warrant before a justice of the peace, and applied towards keeping the streets of such town in repair.

For shewing
stud horses.

Sec. 2. *Be it further enacted*, That no person shall shew a stud horse on the public square, nor in the main street of any town established by law, on any court or public days ; nor shall any person, at any time, put his covering horse to a mare, within the limits of any town except in an enclosed lot ; every person so offending in either case, shall for every such offence, forfeit and pay the sum of two dollars, to be recovered and applied as aforesaid.

Regulations
concerning
springs.

Sec. 3. *Be it further enacted*, That the trustees of any town within this state, established by law, may make such regulations respecting any public spring therein respectively, as they may think proper for keeping the same in good order ; and any person violating such regulations, shall be liable for every offence, to forfeit and pay any sum not exceeding one dollar, to be recovered and applied as aforesaid.

Former laws not
repealed.

Nothing in this act contained shall be construed to repeal any law heretofore made for the regulation of any town within this state, except what relates to subjecting lots in the town of Harrodsburgh to forfeiture for want of improvement, which clause in the act of assembly establishing the said town of Harrodsburgh, is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER XXXVIII.

An ACT to amend the act to reduce into one the several acts for Limitation of Actions.

Approved February 6, 1798.

Vide Vol. I. Chapter 258, and the notes.

SECTION 1. *BE it enacted by the General Assembly*, That every prosecution for profane swearing, cursing or being drunk, or for Sabbath breaking, shall be made within three months after the offence committed, and not afterwards.

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This act shall commence and be in force from and after the passage thereof.

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CHAPTER XXXIX.

An ACT declaring that Infants may sue by their next Friends.

Approved February 7, 1798.

Copied from an act of 1786, of Virginia

BE it enacted by the General Assembly, That in every case where such as be within age, may sue, their next friends shall be admitted to sue for them.

CHAPTER XL.

An ACT respecting delinquent Sheriffs.

Approved February 13, 1798.

See the prelection to Chap. 16, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,* That upon all judgments now obtained, or which may hereafter be obtained by this commonwealth against any sheriff or sheriffs, and his or their securities, and an execution hath been or shall hereafter be levied on the property of such sheriff or his securities, or both of them, and the same hath been or shall be returned, that the property so taken in execution, cannot be, or hath not been sold, for want of bidders or purchasers; in such cases it shall be the duty of the auditor to issue an execution in the nature of *venditioni exponas*, directed to the coroner, or in case he is a party interested, to such other person as may by law be authorised so to do, to remove the property out of the county where such sheriff resides, and expose it to sale at the court-house of such other county as the auditor shall in such execution direct. The auditor shall specially name in such execution, the place at which the said property shall be exposed to sale, making choice of such place as will in his opinion be most likely to ensure a sale, and taking care also that the day or days appointed by him for the sale, shall be court days for the said county.

Proceedings on certain executions.

Duty of auditor

Sec. 2. In case an execution under this act shall be returned that the property has not been sold for want of bidders or purchasers, or but part thereof can be sold, it

Further duty of auditor.

1798. shall be the duty of the auditor to direct another execution for the removal of the said property to the court-house of some other county, and there to be exposed to sale as aforesaid; and in case a sale shall not be then effected, it shall be the duty of the auditor to issue executions as aforesaid, for the removal of said property from court-house to court-house, and from time to time, as he shall think fit, until the said execution and all costs and charges attending the same, are satisfied.

Coroner's duty. Sec. 3. The said coroner or other person authorised as aforesaid, shall have power to procure upon the best terms they can, all necessary assistance in the removal, sustaining and safe-keeping said property, and all expenses accruing thereby, together with an allowance of two dollars per day to the said coroner or other person authorised as aforesaid, for his allowance, besides his legal fees, shall be charged to the said sheriff or his securities, and collected with the amount of the execution as aforesaid, and be retained by the said coroner or other person authorised as aforesaid. Lands shall be sold as other property directed by this act. All sales made as aforesaid shall be for cash only.

Penalty on failure. Sec. 4. Any coroner or other person authorised as aforesaid, failing or refusing to comply with the requisitions of this act, shall, upon motion of the auditor, on ten days previous notice in writing, be liable to a fine for each failure or neglect, any sum not exceeding five hundred dollars, to be collected as other fines are.

Auditor may draw money for certain purposes. Sec. 5. The auditor shall from time to time, on certificate from the governor, draw from the treasurer all sums of money necessary in enabling him to give notices and performing other necessary acts and duties to enforce collections from sheriffs or other officers, made for monies due to this commonwealth.

This act shall be in force from and after the passage thereof.

CHAPTER XLI.

An ACT for regulating the Solemnization of Marriages.

Approved February 3, 1798.

See Chapter 186, of this Volume.

No person shall be married without license.

SECTION 1. *BE it enacted by the General Assembly,* That no minister shall celebrate the rites of matrimony:

between any persons, or join them together as man and wife, without lawful license; and if any minister shall celebrate the rites of matrimony, or join any persons in marriage, without such license as by this act required, he shall, for every such offence, be imprisoned one whole year, without bail or mainprize, and shall also forfeit and pay five hundred pounds current money; and if any minister shall go out of this commonwealth, and join in marriage any person or persons belonging to this commonwealth, without such license, he shall be liable to the same penalties and forfeitures as if such marriages had been by him celebrated within this commonwealth: and that the offence aforesaid may be prosecuted, tried, and determined, in any court of record within this commonwealth; which courts are hereby declared to have cognizance thereof, and may hear and determine the same, and award execution thereupon, according to the course of the common law.

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Penalty on ministers marrying without.

Sec. 2. It shall and may be lawful for any ordained minister of the gospel, in regular communion with any society of Christians, and every such minister is hereby authorised to solemnize the rites of matrimony, according to the forms and customs of the church to which he belongs, between any persons within this state, who shall produce a marriage license, pursuant to the directions of this act, directed to any authorised minister of the gospel. *Provided always*, that every such minister shall first produce credentials of his ordination, and also of his being in regular communion with the Christian society of which he is reputed a member, to the court of the county in which he resides, shall take the oath of allegiance to this commonwealth, and enter into bond with two or more sufficient securities in the sum of five hundred pounds current money, payable to the governor for the time being and his successors, conditioned for the true and legal performance of this trust, whereupon such court is hereby required to grant such minister a testimonial in the following form, given under the hand and seal of the then sitting judge or senior magistrate, and attested by the clerk, to wit—"This shall certify to all to whom it may concern, that at a court held for

What ministers may celebrate the rites of marriage.

How they are to obtain credentials.

The form of the testimonial.

on the day of in the year one thousand
A. B. produced credentials of his ordination,
and also of his being in regular communion with the

1798.

church, took the oath of allegiance to this commonwealth, and entered into bond as required by "an act to regulate the solemnization of marriages," and that he is thereby authorized to celebrate the rites of matrimony, agreeably to the forms and customs of the said church, between any persons to him regularly applying therefor within this state. Given under my hand and seal, the day and year above written." Every testimonial so obtained, shall be taken as good and sufficient authority for celebrating the rites of matrimony, according to law.

[How Quakers
may solemnize
marriages.]

Sec. 3. It shall and may be lawful for the people called Quakers, and Menonists, or any other Christian Society, that have adopted similar regulations in their church, to solemnize their own marriages, or be joined together as husband and wife, by the mutual consent of the parties, openly published and declared before their congregation, when convened for religious worship, in the manner and agreeably to the regulations that have been heretofore practised in their respective societies.

And whereas some magistrates and others not authorised by law, have been induced by the want of ministers to solemnize marriages :

Certain marriages solemnized by magistrates, confirmed.

Sec. 4. *Be it enacted*, That all such marriages, openly solemnized and made at any time, and consummated by the parties cohabiting together as husband and wife, shall be taken, and they are hereby declared good and valid in law ; and all and every person or persons solemnizing such marriages, are and shall be exonerated from all pains and penalties, as if they had been authorised ministers.

Sec. 5. *Provided always*, and it is the true intent and meaning of this act, that nothing herein contained shall extend, or be construed to extend, to confirm any marriages heretofore celebrated, or which may hereafter be celebrated, between parties within the degrees of consanguinity or affinity, forbidden by law, or where either of the parties were bound by a prior marriage, to a husband or wife, then alive.

Marriages to be registered.

Sec. 6. And that a register of all marriages may be preserved, *Be it enacted*, That a certificate of every marriage hereafter solemnized, signed by the minister celebrating the same, or in case of Quakers, Menonists, and other societies that solemnize their marriages by consent of the parties, taken in open congregation as aforesaid,

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by the clerk of the meeting, shall be by such minister or clerk (as the case may be) transmitted to the clerk of the county wherein the marriage is so solemnized, within twelve months thereafter, to be entered on record by the clerk, in a book by him to be kept for that purpose, which shall be evidence of all such marriages. The clerk shall be entitled to demand and receive of the party so married, the sum of fifteen pence for recording such certificate and giving the bearer a receipt therefor.

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Sec. 7. Every minister or clerk of a congregation (as the case may be) failing to transmit such certificate to the clerk of the court in due time, shall forfeit and pay the sum of twenty pounds current money; and if the clerk of any county shall fail to record such certificate, he shall forfeit and pay the like sum of twenty pounds, to be recovered with costs of suit by the informer, in any court of record.

Penalty on ministers failing to return a certificate.

Sec. 8. Every license for marriage shall be issued by the clerk of the court of that county wherein the *feme* usually resides, in the manner following, that is to say: the clerk shall take bond with good surety for the sum of fifty pounds current money, payable to the governor for the time being, and his successors, for the use of the commonwealth, with condition that there is no lawful cause to obstruct the marriage, for which the license shall be desired; and every clerk failing herein, shall forfeit and pay fifty pounds current money: and if either of the parties intending to marry, shall be under the age of twenty-one years, and not theretofore married, the consent of the father or guardian of such infant, shall be personally given before the said clerk, or certified under the hand and seal of such father or guardian, attested by two witnesses, and thereupon the clerk shall issue a license, and certify that bond is given; and if the parties, or either of them, be under the age aforesaid, he shall also certify the consent of the father or guardian, and the manner thereof, to any minister legally authorised to celebrate the rites of matrimony; and every license so obtained and signed, and no other whatsoever, is hereby declared to be a lawful license; and if any county clerk shall in any other manner issue or certify any marriage license, or if any person whatsoever other than such clerk, shall presume to sign or direct any such license, every person so offending shall be imprisoned one

Manner of issuing marriage licenses.

Where either of the parties is an infant.

Penalty for issuing or signing a license contrary to this act.

1798. whole year, without bail or mainprize, and shall forfeit and pay five hundred pounds current money, recoverable in any court of record within this commonwealth.

Marriages within certain degrees to be annulled, & the parties separated.

Duty of the state's attorney when informed of such marriages.

In what case a feme of 12, & under 16 years, shall forfeit her inheritance by marrying.

Sec. 9. If any person shall marry within the following degrees, that is to say, if the son shall marry his mother or step-mother, the brother his sister, the father his daughter, or his son's daughter or his daughter's daughter, or if the son shall marry the daughter begotten and born of his step-mother, or the son shall marry his aunt, being his father's or his mother's sister, or marry his uncle's wife, or the father shall marry his son's wife, or any man shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter, every person or persons so unlawfully married, shall be separated by the definitive sentence or judgment of a district court or court of quarter sessions, and the attorney for the district or county, upon complaint being made to him of any such marriage, shall file an indictment against such persons, and upon conviction by due course of law, they, or any of them, shall be fined at the discretion of a jury, and the court shall proceed to give judgment, and moreover, shall declare such marriage null and void, to all intents and purposes; and if the court see fit, may cause the parties so separated to give bond, with sufficient security, that they will not cohabit hereafter, in such penalty as the court shall judge reasonable. *Provided always*, that nothing herein contained shall be construed to render illegitimate the issue of any marriage so annulled.

Sec. 10. If any *feme sole*, of the age of twelve and under sixteen years, shall marry any person whatsoever, contrary to the will and consent of her father or guardian, then the next of kin to such *feme* to whom the inheritance shall come, shall have right to enter upon and take possession of all lands, tenements, hereditaments and other real estate whatsoever, which such *feme*, at the time of her marriage, had in possession, remainder or reversion, and shall have, hold, occupy and enjoy the same, to him or her, and the representatives of his or her stock, with all the immunities and privileges thereunto belonging, during the time of such coverture, but after determination thereof, all such estate, and the possession, reversion and remainders, rights, immunities and privileges, shall immediately revest, be and remain

in the said *feme* and her heirs, other than her husband, 1798.
and she and they, and every of them, may re-enter and
take possession thereof, as if this act had never been
made.

Sec. 11. All the fines imposed by virtue of this act, ^{Fines how ap-}
shall be to the use of the commonwealth. ^{propriated,}

CHAPTER XLII.

An ACT concerning Coroners.

Approved February 10, 1798.

See the prelection to Chap. 81, of Volume I.

SECTION 1. *BE it enacted by the General Assembly,* ^{Coroners to}
That every coroner, before he enters upon the duties of ^{take an oath of}
his office, shall in open court, take the oath of fidelity to ^{office.}
the commonwealth, and the following oath of office, viz.

“ I, A. B. do swear, that I will well and truly serve the ^{Form thereof.}
commonwealth, in the office of a coroner, in this county
of ^{and therein will diligently and truly do all}
things appertaining to my said office, according to the
best of my knowledge and power, both for the common
weal and the good of the inhabitants within said county,
taking such fees only as are by law allowed. So help
me God.” And before he shall be at liberty to serve
any writ of execution, shall moreover in the court of his ^{Not serve exe-}
county, enter into bond with good and sufficient security, ^{cutions until}
payable to the governor for the time being, and his suc- ^{they give bond}
cessors, for the use of the commonwealth, in the penalty ^{and security.}
of one thousand pounds, with condition for the true and
faithful execution of his office ; and if any coroner shall
presume to serve any such writ of execution without first
taking the said oaths, and entering into bond as by this
act is directed, he shall forfeit and pay the sum of five ^{Under penalty.}
hundred pounds, one half to the use of the informer, and
the other half to the use of the commonwealth ; and shall
moreover be liable to the same damages, judgment and
execution, at the suit of the party grieved, in case of any
misdemeanor or breach of duty in the execution there-
of, as he would have been subject to in the like case af-
ter having been duly qualified to execute his said office.

Sec. 2. Upon request made to a coroner to come and ^{Inquest to be}
enquire upon the view of any person slain, drowned or ^{taken by coro-}
otherwise by misadventure or suddenly dead, or where ^{ners.}

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any house is broken, he shall forthwith issue his precept to the sheriff or constable of the county, commanding him to summon at least twelve of the most respectable house-keepers of the vicinage or county, to appear before him at the same place, with all convenient speed.

How to be taken.
ken.

Sec. 3. And when the said house-keepers come to such place, the coroner, upon the oath of twelve of them, shall enquire in this manner, to wit: If they know where the person was slain, whether it was in any house, field, bed, tavern, or company, and who were there; likewise, it is to be enquired, who were culpable either of the act, or of the force, and who were present, either man, or woman, and of what age soever they be, if they can speak, or have any discretion.

Persons found guilty, how to be dealt with.

Sec. 4. And how many soever be found culpable by inquisition, in any of the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the jail until the next court be holden within the county for the examination of such offender; and the coroner shall have the like power and authority to summon such court, and shall proceed in like manner as a justice of the peace, before whom such criminal might have been charged with such offence, could or ought to do by law.

Duty of the jury when any person is found slain.

Sec. 5. If it fortune any such man to be slain, which is found in the fields or woods, first it is to be enquired whether he were slain in the same place or not, and if he were brought and laid there, they shall do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse, or otherwise; it shall be enquired also, if the dead person were known, or else a stranger, and where he lay the night before.

Coroner to commit to writing the evidence given to the jury and to take recognizances of the witnesses to appear at the court.

Sec. 6. And every coroner upon any inquisition found before him, whereby any person or persons shall be indicted for murder, or man-slaughter, or as accessory or accessories to the same, before the murder or man-slaughter committed, shall put in writing the effect of the evidence given to the jury before him being material, and the said coroner shall have authority by this act, to bind all such by recognizance or obligation, as to declare any thing material to prove the said murder or man-slaughter, offences or felonies, or to be accessory or accessories to the same, as is aforesaid, to appear at the

court to be holden within the county for the examination of such offender or offenders, then and there to give evidence against the party so indicted, at the time of his trial, and shall certify as well the same evidence, as such bond or bonds in writing as he shall take, together with the inquisition or indictment before him taken and found, at or before the time of his said trial thereof, to be had or made to such court.

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Sec. 7. In like manner it is to be enquired of them that be drowned, or suddenly dead, and after such bodies are to be seen, whether they were so drowned or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies, whereupon they shall proceed in the form above said.

Where persons
are drowned or
suddenly dead.

Sec. 8. And immediately upon these things being enquired, the bodies of such persons being dead or slain, shall be buried.

Bodies to be
buried.

Sec. 9. If any person be grievously wounded, especially if the wounds be mortal, the party accused shall be taken immediately and kept until it be known perfectly whether he that was hurt shall recover or not, and if he die, the defendant shall be kept, and if he recover health, he shall be attached by pledges according to the danger of the wound.

Persons giving
dangerous
wounds, to be
arrested.

Sec. 10. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound or hurt is, and how many be culpable, and how many wounds there be, and who gave the wounds, all which things must be enrolled in the roll of the coroners.

Wounds to be
reviewed and
described.

Sec. 11. Moreover, if any be accused of any act done as principals, they that be accused or accessory shall be attached also, and safely kept in custody until the principal be attainted or delivered.

Accessories to
be apprehended
and confined,
and any suspec-
ted of murder.

Sec. 12. If any be suspected of the death of any man being in danger of life, he shall be imprisoned as before is said, in like manner hue shall be levied for all murders and burglaries, and for men slain, or in peril to be slain, and all shall follow the hue and steps, as near as can be, and he that doth not, shall be amerced at the discretion of a jury.

Hue to be le-
vied of mur-
ders, &c.

Sec. 13. If any be found culpable by inquisition taken in manner directed by this act, and be not present

Warrants to be
issued to appre-

1798.
 {
 hend persons
 guilty of mur-
 der. &c.

nor in custody, the coroner shall straight issue his warrant to apprehend the person so found culpable, and the accessories, if any, and the person accused, if apprehended, shall straightway be carried before some justice of the county or corporation where such offence was committed, to be dealt with as the law directs.

Penalty on coroner for neglecting his duty.

Sec. 14. If any coroner be remiss, and make not inquisition upon a view of the body slain or murdered, or shall not endeavor to do his office upon any person dead by misadventure, or shall not certify the inquisition by him taken in the manner directed by this act, he shall for every such offence forfeit the sum of ninety pounds, to be recovered by action of debt, in any court of record of this commonwealth, one half thereof to the use of the informer, and the other half to the use of the commonwealth.

Process when to be served by the coroner.

Sec. 15. In every case when by reason of a just exception to the sheriff of any county, any writ, of what nature soever the same may be, shall be delivered to the coroner of such county to execute, such coroner shall do and perform all things by virtue of such writ, which the sheriff himself might or ought to have done, had there been no just exception against him, according to the nature of the case; and in case of any neglect or breach of his duty, such coroner shall be subject to the pains and penalties, fines, forfeitures and damages, and to the same proceedings, judgments and execution, as sheriffs are subject to in like cases. And upon every execution issued against a coroner, upon any judgment against him obtained for breach or neglect of his duty, the clerk shall endorse that "no security is to be taken."

Coroner subject to the like penalty and fines, as sheriffs.

When the office of coroner, &c. shall be vacant.

Sec. 16. *And be it further enacted*, That when any coroner or other officer whatsoever, who is appointed agreeable to the constitution and laws of this state, shall reside out of the county for which he was appointed and commissioned, such office shall be considered vacant, and such vacancy shall be filled according to law.

CHAPTER XLIII.

An ACT concerning Awards.

Approved February 12, 1798.

See the preface to Chap. 205, of Vol. I.

Submission to arbitration to be made a rule of court.

SECTION 1. *BE it enacted by the General Assembly*, That it shall and may be lawful for all persons desirous to end any controversy or suit by arbitration, to appoint

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any person or persons as arbitrators, and (if no suit is depending) shall concisely state in writing, the nature of their controversy, to any court having jurisdiction thereof; and the said court shall thereupon issue their order, certified by their clerk and directed to the said arbitrators, stating the dispute to them referred; and in case any arbitrator or arbitrators so appointed, shall fail or refuse to act, the court may, on the application of either party, and their making satisfactory proof thereof, either discharge the said order of reference, or appoint such other referees as the parties shall nominate. The said arbitrators, or either of them, are empowered to issue *subpoenas* for witnesses, under the same regulations as clerks of quarter session courts are, to which all sheriffs and constables are directed to give obedience; and all persons summoned as witnesses by virtue of said *subpoenas*, who may fail to attend at the times and places in the said *subpoenas* expressed, or refusing to give evidence when they do attend, shall be subject to the same fines and penalties as witnesses are in similar cases, in the courts of quarter sessions.

Sec. 2. The arbitrators so chosen, before they enter on the investigation of any matters to them submitted, shall take an oath, or affirmation, impartially to determine the controversy to them submitted, agreeably to law, evidence, and the equity of the case, to the best of their judgment, without favor or affection; which oath shall be administered to them by any judge or justice of the peace within this commonwealth. The said arbitrators shall make up their award in writing, under their hands and seals, noting therein the time at which it was made, one fair copy of which, signed as aforesaid, shall, immediately upon its being made, be delivered to each of the contending parties, and the original returned by them to the court in which the submission was made, at the court next succeeding the date of said award, provided there be fifteen days between the date of said award and such court. The award so returned, shall be entered of record, and made the judgment or decree of said court, and shall not be invalidated, set aside, or appealed from, unless, it shall be made appear to the court that such award was obtained by corruption, evident partiality, or other undue means; in any of which cases, if either of the parties shall think himself aggrieved by the

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Arbitrators how to be notified.

Where they refuse to act.

Power of arbitrators to summon witnesses.

Penalty on witnesses failing to attend.

Arbitrators to take an oath.

The manner of making awards.

Awards to be the judgment of the court, and final.

For what causes awards may be set aside.

1798. judgment or decree of the court, upon an award so improperly obtained, he may appeal therefrom to the court of appeals, provided it has cognizance thereof, and provided also that the said appeal shall be made at the court to which the award is returned, or within sixty days thereafter in the office of the clerk of the said court; which appeal the said clerk shall grant, on the party, or his agent or attorney, entering into bond with sufficient security, to prosecute the same; and the party appealing shall, in either case, within ten days after obtaining the said appeal, give to the opposite party, or to his agent, notice thereof in writing; a copy of which, with an affidavit of the service thereof, he shall lodge, together with the record from the court below, in the office of the court of appeals, on or before the first day of the ensuing court thereof; and in case he fails so to do, he shall lose his right of appeal, and the party in whose favor the award may be, shall be entitled to sue out an execution thereon, in the manner prescribed in similar cases of judgments or decrees.
- How appealed from. **Sec. 3.** No award made by virtue of this act, shall be liable to be examined into, superseded or revised by writ of error, or be set aside by the court to which it may be returned, for want of form only, nor for other irregularity, if by such award it manifestly appears that the suit, matter or controversy submitted, is thereby finally and certainly decided. *Provided nevertheless, that* nothing herein contained shall be construed to take from courts of equity their power over awards, arbitrations or umpirages.
- Awards not to be set aside for irregularity. **Sec. 4.** The clerks shall be allowed for all the services to be performed by them under this act, the same fees as are allowed by law for the like services, in cases of a similar nature.
- Power of courts of equity as heretofore. **Sec. 5.** The arbitrators for their services shall receive nine shillings per day each, if demanded, to be paid jointly by the contending parties, before copies of the award is delivered to them as aforesaid.
- Fee to the clerk. The fees to the clerk prior to the return and entry of the award, shall be jointly paid down by the contending parties, as those services are rendered; but after the award is entered of record, all subsequent costs shall be charged to, and collectible from that person against whom the judgment or decree of the court shall be, un-
- To the arbitrators.
- How paid.

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der such award; except, however, it shall be otherwise directed in and by said award. 1798.

Sec. 6. Witnesses shall be allowed the same compensation while travelling to, and attending on said arbitrators, and be equally privileged from arrests, as witnesses attending the courts of quarter sessions. All former acts concerning awards or arbitrations, now in force in this commonwealth, are hereby repealed. Allowance to witnesses. Repealing clause.

CHAPTER XLIV.

An ACT to reduce into one the several Acts concerning the Assignment of Bonds and other Writings.

Approved February 10, 1793.

See Chap. 267, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,* That all bonds, bills, and promissory notes, whether for money or property, shall be assignable, and it shall and may be lawful for the assignee of any such bond, bill, or note, to sue for the same in the same manner the original obligee or payee might or could do. *Provided always,* That the defendant shall be allowed all discounts, under the rules and regulations prescribed by law, he can prove at the trial, either against the plaintiff or the original obligee or payee, before notice of the assignment. *And provided always,* That nothing in this act contained, shall be so construed as to change the nature of the defence, either in law or equity, that any defendant or defendants may have against an assignee or assignees, or the original assignor or assignors. All kinds of bond, &c. made assignable. Discounts to be allowed. And Not to affect the nature of the defence.

Sec. 2. The fifth, sixth and seventh sections of the act of the Virginia Assembly, passed in the year one thousand seven hundred and forty-eight, entitled "an act for ascertaining the damage upon protested bills of exchange, and for the better recovery of debts due on promissory notes, and for the assignment of bonds, obligations and notes"—An act of the Kentucky Assembly, passed in the year one thousand seven hundred and ninety-six, entitled "an act concerning the assignment of bonds and other writings," shall be, and the same are hereby repealed. Repealing clause.

This act shall commence and be in force from and after the passage thereof. To commence.

1798.

CHAPTER XLV.

An ACT to reduce into one the several acts concerning the manner of authenticating foreign Deeds, Records, and other Instruments in writing.

Approved February 10, 1798.

Preamble.

SECTION 1. WHEREAS the intercourse between this state and the other states in the union, and between this state and foreign nations, has become more considerable than heretofore, which renders it necessary that some mode should be adopted to give authenticity to deeds and other instruments in writing, foreign judgments, specialties on record, registers of birth and marriages, made, executed, entered into, given and enregistered, by and between persons residing in any of the United States, or in any foreign kingdom, state, nation, or colony, beyond sea, and out of the jurisdiction of this state :

How foreign deeds, &c. are to be authenticated.

Sec. 2. *Be it enacted by the General Assembly, That* all such deeds, if acknowledged by the party making the same, or proved by the number of witnesses before any court of law, or the mayor, or other chief magistrate of any city, town or corporation of the town or county in which the party shall dwell, certified by such court or mayor, or chief magistrate, in the manner such acts are usually authenticated by them, having annexed thereto the attestation of the clerk, and the seal of the court, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form ; and all policies of insurance, charter-parties, powers of attorney, foreign judgments, specialties on record, registers of birth or marriages, as have been, or shall be made, executed, entered into, given and enregistered in due form according to the laws of such state, kingdom, nation, province, island or colony, and attested by a notary public, with a testimonial from the proper officer of the city, county, corporation, or borough, where such notary public shall reside, or the great seal of such state, kingdom, province, island, colony or place beyond sea, shall be evidence in all the courts of record within this commonwealth, as if the same had been proved in the said courts.

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CHAPTER XLVI.

1798.

An ACT prescribing the duties of the Attorney General.

Approved February 12, 1798.

See the prelection to Chap. 39, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,* That it shall be the duty of the attorney general, and he is hereby directed, to attend all the district courts within this commonwealth, as also the general meeting of the district judges; in which several courts it shall be his duty to appear for the commonwealth, in all criminal prosecutions, and in all civil cases in which the commonwealth shall be interested: *Provided however,* if the attorney general fails to attend at any or either of the said courts, the judge or judges of the same, are hereby authorised from time to time, as they may think fit, to employ a proper person to prosecute for the commonwealth in his stead; which person so employed, shall be paid for their services by the attorney general, such sum as shall be directed by the court before whom the services shall be rendered.

Attorney general to attend certain courts, and for what purpose.

In case of failure courts may appoint persons to prosecute for the commonwealth.

The allowance and how paid.

Sec. 2. The salary of the attorney general shall hereafter be at the rate of two hundred pounds per annum, to be paid quarterly, in the same manner as the salary to the judges of the superior courts are. So much of any act or acts as directs judges of the district courts to appoint attorneys to prosecute for the commonwealth, in courts where the attorney general cannot attend, is hereby repealed.

Salary of the attorney general and how to be paid.

Repealing clause.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER LXVII.

An ACT to reduce into one the several acts concerning Strays.

Approved February 10, 1798.

See the prelection to Chap. 19, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,* That if any person shall take up any boat, canoe, or other vessel adrift, he shall cause the same to be viewed by some freeholder of the county where the same shall be taken up, and shall immediately go with such free-

Taker up of a stray boat, &c. his duty.

1793. holder before a justice of the peace of the same county, and make oath when and where the same was taken up, and that the marks thereof have not been altered or defaced since the taking up ; and the justice shall take from such freeholder, upon oath, an exact description of such stray boat, canoe or other vessel, and shall enter the same on his stray book, and give a certificate thereof to the taker up, who shall lodge the same with the clerk of the county court, to be by him recorded in his stray book, and the clerk shall cause a copy of such certificate to be set up at his court-house for three successive court days : for which service he shall be entitled to take and receive one shilling and six pence for every such stray boat, canoe, or other vessel ; and the justice granting a certificate as aforesaid, shall be entitled to a like sum for his services ; and the taker up shall be entitled to a reward of six shillings, for every boat, and three shillings for every canoe, or other vessel, to be paid by the person claiming the same, and be subject to the same fines, penalties and forfeitures, as is herein before directed in cases of failure in any of the duties hereby enjoined.

Clerk's fee,

Justice's fee.

Reward to the taker up.

Sec. 2. *Be it further enacted by the General Assembly,* That every person who shall take up any stray horse, mare or colt, shall within ten days take the same before some justice of the peace of the county where such stray shall be taken up, and make oath before such justice that the same was taken up at his or her plantation and place of residence in said county, and that the marks or brands have not been altered since the taking up : the said justice shall then issue his warrant to three disinterested house-keepers in the neighborhood, unless they can be otherwise had, causing them to come before him to appraise said stray, after they, or any two of them, being sworn to appraise such stray without partiality, favor or affection ; which appraisement, together with the marks, brands, stature, colour and age of such horse, mare or colt, shall be entered in a book to be kept by said justice, and certified under his hand, and transmitted to the clerk of such county within twenty days after the same is taken, who shall enter the same in a book to be by him kept for that purpose ; and the taker up shall pay to the clerk one shilling for making such entry, to be paid and collected as his other fees ; and any per-

Duty of a taker up of a stray horse, &c.

Appraisement.

Clerk's fee:

son who shall take up any head of neat cattle, sheep, hog or goat, shall cause the same to be viewed by some house-holder of the county where the same shall happen, and shall immediately go with such house-keeper before a justice of the county, and make oath before him as is required in taking up a stray horse, mare or colt, and then such justice shall take from such house-keeper, upon oath, a particular description of the marks, brands, colour and age of every such neat cattle, sheep, hog or goat, and such justice shall cause the said strays to be appraised in like manner as is required to be done in case of a horse, mare or colt; which description and valuation shall be entered by such justice in a book to be kept by him as aforesaid, and by such justice transmitted to the clerk of the county, to be by him kept as before directed; and the taker up shall pay the justice one shilling, and the clerk one shilling, for every entry so made by them; and every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog and goat to be publicly affixed at the courthouse door of his county, on two several court days next after the same shall be transmitted to him, for which he shall receive the same fee as for entering the same in a book. *Provided*, that if two or more strays of the same species, are taken up by the same person, at the same time, they shall be included in one entry, and in one advertisement; and in such case such justice and clerk shall receive no more pay, than for one of such species: *Provided also*, that no person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog or goat, between the first day of April, and the first day of November following, unless the same may be found within the lawful fence or enclosure of the taker up, having broken in the same; and for a reward of taking up, there shall be paid by the owner, six shillings for every horse, mare or colt; and for every head of neat cattle, two shillings; and for every sheep, or goat, one shilling; and for every hog above a year old, one shilling, and all reasonable charges. And every person taking up a stray horse, mare or colt, shall within two months after the same is appraised, provided the owner shall not have claimed his property during that time, transmit to the public printer, a particular description of such stray or strays, and the valuation thereof, together with the name

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Duty of a taker
up of neat cat-
tle, sheep, hog
or goat.

Justice's and
clerk's fees.

Provido.

Reward to the
taker up.

Stray horse, &c.
to be advertised

1798. of the county and place of residence, certified by the clerk of the county, or justice before whom such stray was appraised, to be advertised three weeks in the Kentucky Gazette, Kentucky Herald, or Mirror; for which the
- Printer's charge printer may demand two shillings for the first time of advertising, and one shilling for every time afterwards; and when there are two or more strays in the same advertisement, such printer shall not demand more than one half the sum for such additional stray or strays, or each of them, as is allowed in case there is but one. And if
- Stray horse, &c. no owner appears and proves his property within two years after such publication, the property shall be vested in the taker up; nevertheless the former owner may at any time thereafter, by proving his property, recover the valuation money; and if any person shall trade, sell, or
- Penalty on taker up for selling or taking whatever, he or she so offending, shall forfeit and pay the sum of fifty pounds, to be recovered by any person suing for the same, in any court of record within this commonwealth, having cognizance thereof, the one half to the informer, and the other half to the commonwealth; and where the owner of any stray head of neat cattle, sheep, hog or goat, does not prove his property within twelve months after the same has been published at the door of the court-house, and where the valuation does not exceed twenty shillings, the property shall be vested in the taker up; but when the valuation shall exceed twenty shillings, and no owner appears within the time aforesaid, the property shall also be vested in the taker up. Nevertheless, the former owner may at any time, by proving his property, recover the valuation thereof; and it shall not be lawful for any person to take up any
- Who may take up a stray. stray (except such as shall be hereafter excepted) unless he shall have a freehold, be tenant for three years, or have a bond for the land on which he resides. Any
- Any person may take up a stray without the settlement. person finding any stray horse, mare or colt, running at large without the settlement of this state, may take up the same, and shall immediately carry such stray or strays before the nearest justice of the peace, and make oath that he hath not altered the marks or brands of such stray or strays since taking up; and if the taker up shall
- Duty of such taker up. have a freehold, be tenant by lease for three years, or have a bond for the land on which he resides within that county, it may and shall be lawful for him to post such

stray or strays, as herein before directed by this act, as if the same had been taken up on his plantation or place of residence. And when the taker up shall not be qualified as aforesaid, he shall take the oaths before required, and deliver up such stray or strays to the said justice, who shall cause the same to be dealt with as is directed by this act; but if no owner appears to prove his property within one year, such stray or strays shall be sold to the highest bidder, giving public notice of such sale two months previous thereto; and after paying the taker up all reasonable charges, the balance shall be put into the public treasury, by the said justice, who shall take a receipt for the same. Nevertheless the former owner at any time within three years after taking up, by proving his property before any county court in this commonwealth, and obtaining a certificate thereof from the clerk of said court to the treasurer, shall receive the balance aforesaid; and when any justice shall fail to pay any money for any stray heretofore or hereafter sold, agreeably to this act, into the public treasury, within three months after the passage hereof, or after selling such stray or strays, such justice shall forfeit and pay the sum of twenty dollars, with costs, to be recovered on motion of the auditor, in any court of quarter sessions in this state, or superior court having jurisdiction in similar cases, for the use of the commonwealth, or by action of debt or information in the court of quarter sessions in the county where such justice may reside, one half to the use of the commonwealth, and the other to the use of any person suing for the same; and moreover be liable to pay the price of such stray or strays, with interest thereon.

Sec. 3. *And be it further enacted*, That if any stray taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be answerable for the same. And if any person shall take up any stray at any other place within the inhabitants than his or her plantation or place of residence, or without being qualified as required by this act, he shall forfeit and pay ten dollars, with costs, recoverable before any justice in the county where the offence shall have been committed; or not having property sufficient to pay such fine, he shall be liable to be confined one month in the jail of the county where he may be found, by a

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Stray to be sold if no owner appears within one year.

The money to be lodged in the treasury.

Penalty on justices failing to pay the money into the treasury.

Taker up not liable if the stray dies, &c.

But liable to penalty for taking up within the inhabitants, off of his own plantation.

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warrant under the hand and seal of any justice of the peace, directed to the sheriff, who shall confine such offending person accordingly. The prison fees of said delinquent, shall be paid by the county. Nevertheless, such delinquent shall be liable to re-pay such fees to the county, should he thereafter possess property sufficient.

Or without,
contrary to this
act.

And any person taking up a stray out of the limits of the settlement of this state, and failing to comply with the requisitions of this act, shall be subject to the same penalties; and if any person taking up any stray, of any species, fails to comply with the requisitions of this act, he shall, for every such offence, forfeit and pay to the informer the sum of ten dollars, with costs, recoverable before any justice of the county where such offence shall be committed.

Pounds to be
built in each
county.

Sec. 4. *And be it further enacted,* That the justices of the county courts of each county within this state, shall, within three months after the passage of this act, cause a pound to be made at the several court-houses, and in all new counties, within three months after the place of erecting the public buildings is fixed upon, with a good and sufficient fence, gate, lock and key, where all stray horses or mares above two years old, taken up within twenty miles of the court-house, shall be kept on the first day of every court, for three courts successively, after the same is taken up, from twelve till four o'clock the same day, that the owner may have an opportunity of claiming his or her property; and any person taking up any stray horse, mare or colt, not exceeding two years old, shall not be compelled to exhibit such stray or strays at the court-house, but shall deal with them in other respects as is directed in this act, and shall moreover advertise the same at the door of the court-house, as is required in case of any stray cattle, sheep, hog or goat; and where any person taking up any stray horse or mare more than two years old, resides twenty miles from the court-house, he shall not be compelled to exhibit such stray or strays more than once in the pound, which shall be on the first day of some court within six months after taking up, provided such taker up causes a particular description of such stray or strays to be advertised at the door of the court-house on two several court days before the same is put in the pound; and the justices of the county court for the said county, failing to have such

Regulations
for exhibiting
strays therein.

Penalty on jus-
tices failing to
erect pounds.

pounds erected, shall forfeit and pay the sum of twenty pounds for every court thereafter the same is neglected; and until such pound is erected, no person taking up any stray horse or mare shall be liable for any penalty for not exhibiting the same therein; and the justices of the county court shall appoint some person to take care of the said pound, and keep the same in repair, whose duty it shall be to attend at the said pound on the several court days, during the time such strays are directed to continue therein, with the key of the same; and the said justices shall cause the expense attending the erecting and keeping the said pound, together with a reasonable allowance for the persons taking care of the same, to be paid out of the county levy; and any person being appointed and undertaking to take care of the said pound, and failing to discharge his duty agreeably to the directions of this act, shall forfeit and pay to the informer the sum of six shillings for every such offence, with costs, recoverable before any justice of the county where such offence shall be committed.

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Pound keepers.

Their duty.

Allowance.

Sec. 5. *And be it further enacted*, That any persons acting contrary to this act, shall forfeit and pay ten dollars for every such offence, recoverable with costs, by any person suing for the same, before any justice of the peace within this commonwealth. All and every act or acts concerning strays, made heretofore, shall be and are hereby repealed. Nothing contained in this act, shall be construed so as to affect any suit, information, or prosecution, commenced for any penalties inflicted by any former laws on this subject.

Penalty for breach of this act.

Repealing clause.

Saving clause.

CHAPTER XLVIII.

An ACT to reduce into one the several acts respecting Clerks.

Approved February 3, 1798.

See the prælection to Chap. 75, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly*, That every person hereafter admitted into office by any county, or other inferior court, as clerk or deputy clerk of such court, shall at the time of his admission or appointment to such office, take the following oath: "I, A. B. do swear, that I will well and truly exercise the

Clerks of inferior courts to take an oath.

Form thereof.

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office according to the best of my skill and judgment, making due entries and records of all orders, judgments, decrees, opinions, or proceedings of the court, and carefully filing and preserving in my office all books and papers whatsoever, which shall be delivered me in charge, or otherwise come to my hands or possession by virtue of my said office; and that I will not wittingly or willingly commit any mal-feasance of office, but in all things and at all times keep my said office free and accessible to every person having a right or claim to business therein, and faithfully executing the duties thereof, without favor, affection, or partiality. So help me God." And if any person shall presume to execute the office of clerk or deputy clerk of any county or other inferior court, without taking such oath, he shall forfeit and pay five hundred pounds, and suffer one year's imprisonment, without bail or mainprize.

Sec. 2. If any clerk shall wittingly make any false entry, or try, or raze, alter or change any record in his keeping, belonging to his office, every such clerk so offending shall be amerced and imprisoned at the discretion of a jury, and shall moreover be liable to the action of the party grieved. And if any judgment shall be reversed by reason of any such false entry, rasure, alteration, or change, the party grieved may sue by writ of error, or otherwise according to the law, if he see it expedient for him.

County court clerk shall give bond. Condition thereof. Regulations respecting it.

Sec. 3. *And be it further enacted*, That every county court clerk shall, at the time of his appointment and qualification, as aforesaid, enter into bond, with security, to be approved by the court, in the penalty of one thousand pounds, payable to the governor, and his successors for the time being, with condition for the due and faithful execution of his office, and that he will not remove or carry, or suffer to be carried or removed out of the county, the records and papers of the court whereof he is clerk, or any part thereof, except in cases allowed by law; which bond shall by such clerk be transmitted, within three months, to the clerk of the general session of the district court for the time being, to be by him registered and preserved among the papers of the court; and may be prosecuted upon, and the penalty thereof recovered, against any such county court clerk, at the discretion of the said court, for any mal-feasance of office; and such

clerk failing to transmit such bond to the clerk aforesaid for the time being, within the term aforesaid, shall forfeit and pay one hundred pounds, or presuming to execute his office, without entering into such bond, shall forfeit and pay two hundred pounds, and suffer three months imprisonment. 1798.

Sec. 4. *And be it further enacted*, That it shall not be lawful for the court of any county, or the clerk of such court, to remove or cause to be removed the records and papers of the same, or any part thereof, without the county, except in cases of actual invasion or insurrection, where, in the opinion of the court, the same will be endangered, or where for want of such opinion, occasioned by the suddenness of the alarm or danger, the clerk shall at his own discretion remove the same, returning them as soon as the alarm or danger ceases, or except also in other cases heretofore provided for by law; any member of a court, or clerk of the same, offending herein, shall forfeit and pay two hundred pounds. Records not to be removed out of the county. Under penalty.

Sec. 5. The clerks of the several courts in this commonwealth shall, some time in the month of November, annually, account for and pay into the treasury, all sums of money received by them pursuant to an act of the general assembly, entitled "an act to amend and reduce into one the several acts establishing a permanent revenue," and that the amount of the said taxes may be justly ascertained, the said clerks shall make out a fair account yearly, prior to the first of November, of the sums received by them respectively, pursuant to the said act; which account the clerk shall make oath to before the county court in the month of September or October, that it contains a true and perfect statement of all monies received by him, on account of the public; and the court shall certify the same to the auditor, who shall thereupon settle with the clerk agreeable to such account. Every clerk failing to render such account, or failing to pay into the treasury the sum which shall thereby appear to be due the state, shall, for every such offence, forfeit and pay one hundred pounds, to be recovered by motion of the auditor, in the same manner as is directed to be used against delinquent sheriffs; they shall be allowed for collecting and accounting for the said sums of money, five per centum on all sums by them or any of them collected. Clerks' duty in accounting for and paying taxes received by them. Penalty for failure therein. Allowance for collecting taxes.

1798. *Duty respecting executions.* Sec. 6. *And be it further enacted,* That the clerk of every court shall enter in a docket, or book to be kept by him for that purpose, a list of all executions by him issued, the name of the person to whom delivered, and what return is made thereon, in case the same be returned, and shall constantly carry the said book to his court.

County court clerks offices to be annually examined. Sec. 7. And whereas several of the county court clerks in this commonwealth have neglected to record deeds, wills, and other matters of consequence: *Be it enacted,* That the justices of the several courts shall annually appoint two or more fit persons of their number to inspect the clerk's office of their county, and to report to the next court the condition in which they find the papers and records.

CHAPTER XLIX.

An ACT concerning the Punishment of Bigamy.

Approved February 10, 1798.

An act of 1789, of Virginia, punished this offence with death. See acts of 1801, chap. 375.

Preamble. WHEREAS the punishment annexed to the crime of bigamy is too severe and cruel, and not proportionate, when considered either in a moral or political point of view, to the nature of the crime; and it is deemed expedient to alter the law on that subject: Therefore,

Punishment of bigamy. Sec. 1. *Be it enacted,* That any person guilty of the crime of bigamy, and duly convicted thereof, shall be punished by fine, or imprisonment, at the discretion of a jury; if he is punished by imprisonment, the term shall not exceed five years; if by fine, it shall not exceed one half of the estate of the offender, unless where the marriage portion of the first wife exceeded one half, in which case the fine may be equal to the marriage portion. In all cases of fines under this act, it shall be to the use of the first wife, to her and her heirs forever, in lieu of dower, and of all claim or claims whatever upon the remaining part of the estate.

Repealing clause. Sec. 2. So much of every act or statute as punishes bigamy with death, shall be and is hereby repealed.

This act shall be in force from the passage thereof.

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CHAPTER L.

1798.

An ACT providing that the exception of Non-Tenure of Parcel, shall not abate the whole Writ.

Approved February 3, 1798.

Copied from a Virginia act of 1792, which was copied from 25 Edward III, 616.

SECTION 1. *BE it enacted by the General Assembly,* That by the exception of non-tenure of parcel of any lands or tenements, for which any action or suit shall be brought, the writ shall not be abated but for the quantity of the non-tenure which is alledged.

Sec. 2. All and every statute and statutes, act and acts, within the purview of this act, are, and the same shall be hereby repealed.

This act shall commence and be in force from the passage thereof.

CHAPTER LI.

An ACT to amend an act entitled "an act concerning the Poor."

Approved February 10, 1798.

See the prelection to Chap. 118, of Vol. I.

WHEREAS it is represented that unfair practices are used by introducing from other states into Kentucky, friendless, indigent persons, who are abandoned to all the miseries of penury and want, or cast upon the benevolence of the citizens thereof, to their great injury ; for remedy whereof,

Preamble.

Be it enacted by the General Assembly, That if any person shall convey or bring into this state from any other, or shall introduce from any county within this state into another, any poor person, except his father, mother or child, unable to support him or herself, and who is like to become chargeable to the county into which such poor person may be introduced, such person so offending shall, on the warrant of any justice of the peace of the county so aggrieved, which he is hereby authorised and required to issue, be recognized to the next county court of his county, who shall take such sufficient security that such poor person by him or her introduced, shall not become chargeable to the county ; and if he or she shall refuse to enter into recognizance, or give security as afore-

Penalty for bringing poor persons from another state into this, &c.

1798.

said, such offender shall be committed to the jail of the county, until security is given for the maintenance of such poor person, and the offender so failing shall be held and deemed as a vagrant, and proceeded against agreeably to the laws of this state in that case made and provided.

CHAPTER LII.

An ACT concerning Justices of the County and Quarter Session Courts.

Approved February 10, 1798.

See the prelection to Chap. 23, of Vol. I.

Preamble.

WHEREAS it is represented to the present general assembly that great inconvenience hath arisen to the citizens of this commonwealth by persons commissioned as justices of the county and quarter session courts neglecting or refusing to qualify to their respective commissions for a considerable length of time, and thereby occasion an increase of justices unequally distributed through the county, as well as delays in the proceedings in the courts of quarter sessions ; for remedy whereof,

Within what time justices now in commission shall qualify.

Justice living out of the county for which he was appointed, disqualified.

Also if he fails to act for six months.

Clerks' duty in transmitting lists of justices to secretary.

Penalty for failure.

Sec. 1. *Be it enacted by the General Assembly*, That the further time of six months, and no longer, be granted to all such persons holding such commissions as above mentioned to qualify in ; that at the end of said time, all commissions now granted (and not acted on) shall expire, be void and of no effect. That every justice of the county or quarter session courts who may live out of the county for which he has been or may hereafter be appointed, shall on account of said residence be disqualified from holding said office, and his seat shall become vacant. That the seats of every justice of the quarter session courts who shall refuse or neglect to act as such for six months together shall also be vacated, except in cases of absence from the county or sickness.

Sec. 2. *And be it further enacted*, That the clerks of the several quarter session and county courts shall, at the beginning of every annual meeting of the general assembly, transmit to the office of the secretary of state an exact list of the justices in their several counties, who the preceding month were in office. Every clerk refusing or neglecting to forward such list as aforesaid, shall for-

VI. YEAR OF THE COMMONWEALTH.

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It and pay the sum of ten dollars, one half of which to be applied towards lessening the county levy, and the other half to him who will sue for the same. And where any justice of the peace or judge of any court within this commonwealth, shall be removed from office by impeachment, or the address of the legislature, such removal shall be notified by the secretary of state to the clerk of the court whereof such justice or judge was a member, and be recorded and filed among the papers in his office, and also be entered in some book of record in the secretary's office.

1798.

Removal of a judge or justice to be recorded in clerk's and secretary's office

This act shall commence and be in force from and after the passage thereof.

CHAPTER LIII.

An ACT concerning the Right of Entry, and giving remedy against Collusive Judgments of Lands and Wrongful Alienations thereof, in certain cases.

Approved February 10, 1798.

Copied from a Virginia act of 1792, which was copied from two acts of Parliament.

SECTION 1. WHERE a husband doth lose the lands of his wife by default, it is unreasonable that the wife, after the death of her husband, should have no other recovery but by writ of right :

Sec. 2. *Be it therefore enacted by the General Assembly,* That a woman after the death of her husband, shall not be injured by such default, but shall notwithstanding retain her right of entry, and may prosecute the same by any real or mixed action that may best suit the case. If the tenant shall object to the wife's claim, that he entered by judgment, and it be found that his entry was by default, to which he shall answer, if required, he shall then further answer, and shew his right in like manner as in the writ he first purchased against the husband and wife ; and if he can shew such right, the wife shall gain nothing by her writ : but if the husband absent himself, and will not defend his wife's right, or against the wife's consent, will render the wife's lands in any suit instituted against the husband and wife for lands which are her inheritance during the coverture, then the wife may come at any time before judgment, and defend her right.

A woman shall not lose her right of entry by default of her husband.

And may defend her right if he will not.

1798.

Reversioner
shall not suffer
by default of te-
nant for life, &c

Sec. 3. If tenant in dower, tenant by the courtesy, or otherwise for term of life, or by gift, where the reversion is reserved, do make default, or will give up, the heirs, or they unto whom the reversion belongeth, shall be admitted to their answer, if they come before judgment; and if upon such default or surrender, judgment happen to be given, then the heir, or they unto whom the reversion belongeth after the death of such tenants, shall in no wise be injured by such default or surrender.

Disseizors dying
seized shall not
take away the
right of entry,
&c.

Sec. 4. The dying seized hereafter of any disseizor having no right or title, shall not be such descent in law, as to take away the right of entry, from such as, at the time of the death of the disseizor, had lawful title of entry, except such disseizor hath had peaceable possession five years next after the disseizin committed, without entry, or continual claim of such as have lawful title.

Conveyance by
the husband on-
ly, of the wife's
lands shall not
affect her right
after his death.

Sec. 5. No feoffment, or other conveyance, or other act or acts hereafter to be made, suffered or done by the husband only, of any lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be, or make any discontinuance thereof, or be prejudicial or hurtful to the said wife or her heirs, or to such as shall have right, title, or interest to the same, by the death of such wife, but the said wife, or her heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such lands, tenements and hereditaments, according to their rights and titles therein, any such feoffment, or other conveyance or act to the contrary notwithstanding.

CHAPTER LIV.

An ACT prescribing the time for holding District Courts in the Washington District, and for altering the May Session of the Court of Appeals.

Approved February 10, 1798.

BE it enacted by the General Assembly, That the district court for the Washington district shall be held on the third Mondays in the months of February, June and November annually; and that the term of the court of appeals now held on the first Wednesday in May, shall hereafter be held on the second Wednesday in said month.

So much of any act or acts as come within the purview of this act, are hereby repealed. 1798.

CHAPTER LV.

An ACT to amend and revise the act entitled "an act for encouraging and granting relief to Settlers."

Approved February 10, 1798.

See the prelection to Chap. 220, of Vol. I.

SECTION 1. WHEREAS the law passed last February session, entitled "an act for encouraging and granting relief to settlers," is found defective, and wants amending, and it appears most proper to draw the said recited act, with the necessary amendments, into one point of view: Therefore, Preamble.

Sec. 2. *Be it enacted by the General Assembly, That* any widow, or any free male persons above the age of eighteen years, and every other free person having a family, who shall, have, or may actually settle himself or herself on any vacant or unappropriated land, on the south side of Green river, on or before the first day of July next, clear and fence two acres of land, and tend the same in corn, shall be entitled to two and not less than one hundred acres, to include his or her settlement, in any part of the survey which he or she shall express in his or her entry: *Provided however,* that no person shall obtain a certificate for a settlement made on the lands set apart by congress to any Indian tribe, or for any salt lick or spring with a 1000 acres around the same, laid off in a square to the cardinal points, as near as the interfering claims will admit, or for seminaries of learning. And to what quantity of land. Certain land reserved.

Sec. 3. Every person who shall be entitled to a settlement by virtue of this act, shall lay in his or her claim before the commissioners hereinafter appointed, when sitting for that purpose, describing the bounds of his or her lands, and have there his or her witnesses to prove their rights of settlement. Settlers to lay in their claims.

Sec. 4. There shall be paid by every person to whom a settlement is granted agreeably to this act, into the treasury of this state, for each hundred acres of first rate land in that part of the country, sixty dollars; and for all lands of inferior quality, forty dollars; and every Price of the land.

1798. person who shall fail or neglect to pay the same accordingly, and obtain the auditor's *quietus* according to law for the same, within twelve months from the time of granting of such certificate, shall forfeit his or her lands to the state.

If not paid in a certain time, land forfeited.

How settlers are to have their claims entered, &c.

Provido.

Three commissioners to be appointed.

Their power & duty.

To act, when & at what places.

Sec. 5. Each settler obtaining a certificate agreeably to this act, shall enter the same with the surveyor of the county in which the land lies, and shall have the same surveyed as nearly in a square as the interfering claims will admit of, and return a platt and certificate of the survey, accompanied by the commissioner's certificate, to the register's office of this state, within twelve months from the time of obtaining such certificate, and the register shall demand and receive the usual fees, and issue a grant as in other cases : *Provided however*, That a patent shall not issue until the claimant shall produce to the register the auditor's receipt for the payment of the money due for such claim into the treasury ; and the surveyor shall record the commissioner's certificate in a well bound book provided for that purpose, and shall be entitled to receive the same fees as are allowed by law in like cases.

Sec. 6. And for the purpose of ascertaining who shall be entitled to a settlement agreeably to this act, there shall be appointed by the governor three persons, who shall be stiled commissioners, who, or any two of them, shall have power to hear and determine the right of settlement agreeably to this act ; and to determine the class to which such land shall belong, according to the evidence which shall be produced to them, or from their own knowledge, at courts to be holden by them at the following places, viz—At the court-house in Lincoln, on the first Tuesday in August, one thousand seven hundred and ninety-eight ; at the court-house of Green, on the third Tuesday in the same month, in the same year ; at the court-house of Warren, on the first Tuesday in September, in the same year ; at the court-house in Logan, on the first Tuesday in October, in the same year ; at the court-house of Christian, on the third Monday in October ; and at Mr. Pustle's, sen. on the waters of Livingston's creek in the said county, on the first Monday in November, and in the year aforesaid, to continue by adjournment at each place, until the business brought before them is completed. And should the aforesaid

terms, at either of the aforesaid places, be not sufficiently lengthy to permit the commissioners to complete the business before them, they are hereby empowered, at the expiration of the term at such place or places where any business may be left unfinished, to appoint some other time to meet at said place or places where the business before them was left unfinished; which time so appointed shall by the said commissioners be notified in the most general and diffusive manner they can: *Provided however*, there shall not be less than thirty days from the expiration of the term hereby allowed, and the second meeting of the commissioners, at the place or places where it shall be necessary to appoint such second meeting. And the said commissioners shall have power to compel the attendance of witnesses, and examine them touching any thing material in question; and shall have power to hear and determine all disputes between settlers during their sitting, who shall claim a right to settlement under this act, and award costs in the decision of any such contest as to them shall seem right. And in all disputes between settlers respecting the priority of settlement, the eldest improvement made since the first day of March, 1797, * ["shall have the preference, but no person shall obtain a certificate for more than one improvement: *Provided however*, any person who may have actually settled him or herself on any vacant land as aforesaid, prior to the first day of March, one thousand seven hundred and ninety-seven,"] and comply with the requisitions of this act, and reside thereon at the meeting of the commissioners, and who did not obtain a certificate from the former commissioners, shall be considered as the eldest improver; but in a dispute between settlers, concerning the priority of improvement under this act, no improvement shall be considered as sufficient, unless the person making the same shall have actually settled thereon, within four months from the time of improving, unless a sufficient reason can be alledged, to be adjudged of by the commissioners.

Sec. 7. The commissioners shall appoint a clerk, whose duty it shall be to make out a certificate to each person to whom a claim is granted, describing particularly the bounds of the land, agreeably to the location, handed into the court by the person claiming the same; which certificate shall be signed by the commissioners;

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Further powers of the commissioners.

Priority of settlement how to be decided.

(*The lines included thus [] are omitted in the rolls by mistake.)

What is deemed a sufficient improvement.

Commissioners to appoint a clerk. His duty.

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and the said clerk shall enter the locations in a book or books to be by him provided for that purpose, and such book or books, after being signed by the commissioners, shall be lodged in the register's office, and shall be admitted as testimony, or a copy therefrom attested by the register, in any future disputes between settlers.

Tax of one dollar to be paid on each certificate, and how to be appropriated.
Sheriff of the county to attend the commissioners, and his duty.
His fees.

Sec. 8. And for the purpose of paying the said commissioners and their clerk, as also for books and paper, there shall be paid to the clerk, one dollar by each person to whom a claim is granted, before he delivers to such person a certificate, to be disposed of as hereinafter directed ; and the sheriff of the county in which the commissioners are sitting, shall attend by himself or deputy, to perform to them the necessary duties of his office, and he shall be entitled to the usual fees for any services he may perform, to be paid by the party requiring the same, exclusive of six shillings per day, which he shall receive for his attendance on the said court, to be paid by the clerk out of the tax arising on certificates granted by this act.

Allowance to the commissioners & clerks.

Sec. 9. Each of the said commissioners shall receive for his services twelve shillings per day, and the clerk twelve shillings, whilst they are travelling to, attending on, and returning from said courts : and the clerk shall moreover be entitled to one shilling for each certificate for a settlement as aforesaid, and one shilling for entering the same in a book ; and the clerk after paying the commissioners and sheriff, and retaining as much as will satisfy him for his services agreeably to this act, and for the books and papers furnished by him, according to the allowance that shall be made him by the commissioners, shall pay the balance of the money coming into his hands by virtue of this act, if any, into the public treasury, and obtain the auditor's *quietus*, according to law.

Entries on military warrants to be procured, & by whom.

Sec. 10. The surveyors of the counties including any part of the boundary on the south side of Green river, known by the name of the military boundary, shall immediately apply to the surveyors of the Virginia state and continental lines residing in this state, for copies of all entries in their respective offices, made on military warrants in the boundary aforesaid, and the surveyors of said lines, shall give to such surveyors copies of all entries within three months from the passage of this act, if the same is not already done, and may demand and re-

ceive from the surveyors to whom they deliver them, six pence for each entry, to be paid by said surveyors ; and the surveyors of the county aforesaid, on receiving the copies of such entries, shall enter the same in well bound books, to be provided by him for that purpose ; and such surveyors may demand and receive for a copy of each entry furnished by them, one shilling from the person receiving the same.

1798.

Sec. 11. Any person who shall obtain a settlement by virtue of this act, and shall not reside thereon, either by himself or his or her representatives, at least one year next succeeding the date of his or her certificate, shall forfeit all his or her right, title, interest and claim in such settlement, and the same shall revert to this commonwealth, and be disposed of in such manner as the legislature may direct ; and no persons who obtained a certificate from the commissioners appointed under the authority of an act, entitled "an act for the relief of settlers on the south side of Green river," shall be entitled to a certificate for a settlement under this act,

Settlers to reside on their settlements for one year, or forfeit their claims.

No person shall have a right to more than one settlement.

Sec. 12. Any person who obtained a certificate for a settlement agreeably to the before recited act, and have failed to pay the amount thereof into the treasury, as by the said act is directed, shall have the further time of nine months to pay the same, without any forfeiture of the land, by paying six per cent. per annum, and he shall pay the money into the treasury as is by this act directed in case of other settlers ; *Provided however*, that if the principal and interest is not paid within nine months from the date hereof, the lands not paid for, shall be at the further disposition of the legislature, and the state shall have a perpetual *lien* on the same, until the whole amount due thereon is paid.

Further time given to pay the consideration money.


Provido.

Sec. 13. Any person who obtained a certificate for settlement, and neglected to enter the same within the time limited by law with the surveyor of the county, shall have the further time of six months to enter the same in the surveyor's office, and shall proceed to complete his title as by the aforesaid act is required.

Further time allowed to enter certificates.

Sec. 14. Any person who by a mistake may have settled on a military claim, and shall have obtained a certificate from the commissioners for such settlement, in conformity to the before recited act, shall have the further time of twelve months from the passage hereof, to

Provision for those who have settled on military claims through mistake.

1798.  remove and settle him or herself on any vacant and unappropriated land on the south side of Green river, not before excepted, and shall make an entry of the land on which he or she may so settle, in the surveyor's office of the county in which the land on which such person has so settled, may be, and shall have the same surveyed in twelve months from the time of removal, and return a plat and certificate of survey to the register's office, and the register shall issue a grant accordingly: *Provided however*, that a grant shall not issue unless the auditor's receipt shall be produced of the payment of the money for the same, into the treasury: *Provided also*, that no claim so removed, shall be divided, or interfere with any other claims whatsoever, or any salt lick or spring with one thousand acres around the same, to be laid off in a square as near to the cardinal points as the interfering claims will admit; and no surveyor shall receive an entry from any person so removing, unless satisfactory proof is produced to such surveyor, either by the oath of the party or other testimony, that he or she hath obtained a certificate for a settlement made on a military claim, which shall be filed in the surveyor's office.

Regulations to be observed by persons who may move off military claims.

The act passed last February session, entitled "an act for encouraging and granting relief to settlers," shall be, and the same is hereby repealed.

To commence. This act shall commence and be in force from and after the passage thereof.

CHAPTER LVI.

An ACT concerning Witnesses, and prescribing the manner of obtaining and executing Commissions for taking their Depositions in certain cases.

Approved: February 6, 1798.

See the prælection to Chap. 201, of Vol. I.

Who shall not be admitted as witnesses.

SECTION 1. *BE it enacted by the General Assembly*, No person convicted of perjury or subornation of perjury, although he be pardoned or punished for the same, shall be capable of being a witness in any case.

Sec. 2. No negro, mulatto or Indian, shall be admitted to give evidence, but against or between negroes, mulattoes or Indians.

Sec. 3. If any person summoned as a witness, to attend any court within this commonwealth, or to appear

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before commissioners, referees, or other persons appointed by or under the authority of such court, to take or receive his deposition or testimony, or upon any order of survey, shall fail to attend accordingly, not having a reasonable excuse for such failure, such person shall be fined by the court from whence the *subpoena* issued, three pounds. And the witness so failing shall further be liable to the action of the party for all damages sustained by the non-attendance of such witnesses; but if sufficient cause of his or her inability to attend be shewn to the court at the time he or she ought to have appeared, or at the next succeeding court, then no fine or action shall be incurred by such failure.

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Witnesses failing to attend may be fined, and liable to the action of the party.

Sec. 4. If any person so summoned and attending, in any of the causes above mentioned, shall refuse to give evidence upon oath or affirmation (as the case may be) to the best of his or her knowledge, every person so refusing shall be committed to prison by the court, commissioners, referees, or other persons authorised to take or receive his or her deposition or testimony, there to remain, without bail or mainprize, until he or she shall give such evidence.

Refusing to testify how to be dealt with.


Sec. 5. Witnesses shall be privileged from arrests in all cases, except treason, felony and breach of the peace, during their attendance at any court or other place where their attendance shall by *subpoena*, first duly executed by a sworn officer, or by some indifferent person, who shall have made oath to the due execution thereof, have been required; and in coming to and returning from thence, allowing one day for every twenty miles from their places of abode. *Provided always*, that no person whatsoever attending any of the courts in this commonwealth, or upon any reference or survey by order of any such court, in virtue of any *subpoena*, shall be privileged from an arrest by original or other process, unless such person shall be actually a witness in the matter in such *subpoena* expressed.

Their privileges.

Provided.

Sec. 6. In all cases where witnesses are required to attend any court, commissioners, or referees, or any order of survey, a summons shall be issued by the clerk, at the request of either party, or of the commissioners, referees or surveyor interested in or acting under the order of any such court, expressing the day and place where they are to appear, the names of the parties to the

How to be summoned.

1798.  suit, and in whose behalf summoned. Any *subpoena* or process to require or compel the attendance of any witnesses, may be served or executed in the county wherein the said witness shall be found.

Allowances for attending county courts, &c. Sec. 7. Every witness so summoned to appear at any county court, to attend commissioners, referees, or other persons, for the purpose of giving testimony, or upon any survey of lands, and being an inhabitant of the same county, shall be paid by the person or persons at whose suit the summons issued, two shillings and one penny for every day's attendance upon such summons; and every person residing in and summoned out of another county, shall have the said allowance of two shillings and one penny per day for attendance, and be paid for travelling and ferriages to and from court, as witnesses in the superior courts.

For attending superior courts. Sec. 8. Every witness so summoned and attending the court of appeals, or any district court, shall be paid by the party at whose suit the summons issued, two pence per mile for travelling to the places of attendance, and the same for returning, besides ferriages; and five shillings per day for his attendance: which allowance shall be entered by the clerk of course, except where disputes arise concerning the same, and then such disputes shall be determined by the court. Witnesses in all cases, as well civil as criminal, shall be sworn as to their travelling, ferriages and attendance; for which purpose the clerk, or some of his assistants specially empowered by the court, or the commissioners, referees or surveyor, as the case may be, shall administer the oaths.

For attending in several suits at the same time. Sec. 9. No witness shall be permitted to charge his attendance in more than one suit at the same time, but if he be summoned to attend in several suits, he may charge his attendance to either of the parties by whom he shall be summoned, at his election.

Only three witnesses allowed to one fact. Sec. 10. There shall not be allowed in the bill of costs, the charge of more than three witnesses for the proof of any one particular fact.

Commissions for their examination how to be obtained when a witness is leaving the country. Sec. 11. When any witness shall be about to depart the country, or by age, sickness, or otherwise, shall be unable to attend, the court, upon affidavit thereof, or on a certificate that an affidavit has been made to that effect, shall from any justice of the peace to the clerk of the court in which any suit is or shall be depending, may, on request

of either party, award a commission for taking the depositions of such witnesses *de bene esse*, to be read as evidence at the trial, in case the witnesses should be unable to attend ; but the party obtaining such commission, shall give reasonable notice to the other party of the time and place of taking the depositions, otherwise the same shall be void.

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Sec. 12. Upon affidavit that any witness resides beyond sea, or in any foreign country, or in any other of the United States, the court wherein the suit is depending, may, on request of either party, direct a commission to issue from the clerk's office, directed to such commissioners, not exceeding five, as shall be nominated and agreed upon by the parties litigant, for which purpose the party applying for a commission in such cases, shall give the adverse party, his attorney or agent, ten days previous notice of the day of his intended application to the court, without which no commission shall issue ; and if the adverse party, his attorney or agent, shall not attend for the purpose, in that case the party praying the commission, may nominate the commissioners himself, any three of whom, in either case, may proceed to execute the said commission. *Provided nevertheless*, that in either case reasonable notice shall be given to the adverse party of the time and place of taking such depositions ; and the costs of giving notice as aforesaid, as well as of taking any deposition or depositions in any or either of the United States, or beyond sea, or in any foreign country, may be taxed by the court against the party who in their opinion ought in justice to pay the same.

When a witness resides in a foreign country, &c.

Sec. 13. If any party in any suit at common law or in chancery, shall make oath that he verily believes his claim or defence (as the case may be) or a material point thereof depends on a single witness, the court, or the clerk in vacation, may award a commission to take the depositions of such witnesses, *de bene esse*, although he or she be not about to depart the country, nor under any disability, the party in such case giving reasonable notice of the time and place of taking such deposition, to the adverse party.

When a claim or defence depends on a single witness.

Sec. 14. And whereas great inconveniency may arise to the suitors in the several courts in this commonwealth, who are to litigate with persons residing without the commonwealth, and have not agents or attornies within

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the same, by the death or removal of witnesses whose depositions cannot legally be taken for want of notice to such absent persons :

How notice is
to be given
where one of
the parties lives
out of the state
and has no a-
gent therein.

Sec. 15. *Be it therefore enacted*, That when any commission shall be obtained to take the deposition of a witness in a suit depending in any of the courts of this commonwealth, where the plaintiff or defendant in such suit doth not reside within the same, or hath not an agent or attorney within the same, to whom notice of the time and place of taking such deposition can be given, then the person obtaining such commission, having published in the Kentucky Gazette or Herald, or in any other public newspaper printed within this commonwealth, four weeks successively, the time and place when and where the witness is to be examined, and the name of the witness, together with the names of the parties to the suit in which such witness is to be examined, it shall and may be lawful for any plaintiff or defendant as aforesaid, to proceed to take any deposition authorised by the commission issuing from the court agreeable to law, where the suit depends as aforesaid ; and such deposition, when taken and returned to the clerk's office, agreeably to the rules of the court from whence the commission issued, shall there be filed, and allowed to be read in evidence, in the same manner and under the like restrictions as if notice had been duly given to the opposite party, any law, usage or custom to the contrary in any wise notwithstanding ; and the printer may demand and receive the sum of two dollars for publishing such advertisement four weeks, which shall be taxed in the bill of costs, if the party chargeable therewith shall prevail in the suit.

Allowance to
witnesses atten-
ding before jus-
tices of the
peace.

Sec. 16. *And be it further enacted*, That whenever a witness shall attend on any justice, on the trial of any civil suit, by virtue of *subpoena* issued from the said justice, the said witness shall be entitled to the same allowance, to be paid by the party summoning him, as witnesses attending on the several courts of quarter sessions are entitled to, and to be collected by the constable in the same manner ; which allowances shall be taxed in the bill of costs, if the party chargeable therewith shall recover in the said suit.

CHAPTER LVII.

1798.

*An ACT to reduce into one, the several Acts concerning
Bills of Exchange.*

Approved February 6, 1798.

Vide acts of 1793, Chap. 103, of Vol. I.

WHEREAS foreign bills of exchange are accounted in the course of all payments as ready money; and it is reasonable for advancing the credit and circulation of such bills, to make the same a sufficient security, and to expedite the recovery of money thereupon :

SECTION 1. *Be it therefore enacted,* That where any foreign bill of exchange is or shall be drawn for the payment of any sum of money in which the value is or shall be expressed to be received, and where such foreign bill is or shall be protested for non-acceptance or non-payment, the same shall carry interest from the date thereof, after the rate of ten per centum per annum, until the money therein drawn for shall be fully satisfied and paid : but lest any person having such foreign bill should, for the sake of the said interest, delay negotiating the same, or if after it shall be protested, shall not demand payment of the drawer or endorser thereof, it is hereby declared, that no person whatsoever shall pay more than eighteen months interest from the date of any bill to the time it shall be presented protested to the drawer, endorser or endorsers thereof.

Foreign bills
to carry 10 per
cent. interest if
protested.

But only for
18 months from
the date.

Sec. 2. *And be it further enacted,* That it shall be lawful for any person or persons having a right to demand any sum of money upon any protested foreign bill of exchange, to commence and prosecute an action of debt for principal, interest and charges of protest, against the drawers and endorsers jointly, or against either of them separately, and judgment shall and may be given for such principal, charges, and interest, after the rate of ten per centum per annum as aforesaid, to the time of such judgment, and legal interest upon the money recovered, until the same shall be fully satisfied.

Principal, interest, and charges of protest recoverable from drawer & endorser jointly or from either severally.

Sec. 3. And that all foreign bills of exchange which are or shall be protested, shall, after the death of the drawer or endorser thereof, be accounted of equal dignity with a judgment ; and the executors or administrators of every such drawer or endorser, shall be compelled to suffer judgment to pass against them for all debts due

Protested foreign bills of equal dignity with judgments. And to be paid by executors, or drawer, or en-

1798. upon protested foreign bills of exchange, before any bond, bill, or other debt of equal or inferior dignity, under the penalty of being liable to pay the same out of their own proper goods.

Domestic bills for £. 5, or upwards, how to be protested.

Sec. 4. *Be it enacted by the General Assembly, That* if a bill of exchange for the sum of five pounds or upwards, dated at any place in Kentucky, drawn upon a person at any other place therein, expressed to be for value received, and payable at a certain number of days, weeks or months after date, being presented to the person upon whom it shall be drawn, shall not be accepted, by subscribing his name with his proper hand to the acceptance, written at the foot or on the back of the bill, or being accepted in that manner and not otherwise, shall not be paid before the expiration of three days after it shall become due, the person to whom it shall be payable, or his agent or assigns, may cause the same to be protested by a notary public, or if there be no such, by any other person in presence of two or more credible witnesses, for non-acceptance, in the form or to the effect following, written under a fair copy of the bill: "Know all men that I on the day of at the usual place of abode of the above named presented to him the bill of which the above is a copy, and which said did not accept, whereof I the said do hereby protest the said bill, dated at this day of ;" or for non-payment after acceptance in the same form, or to the same effect, except that the words "presented to him the bill of which the above is a copy, and which said did not accept," shall be left out, and instead of them, the words "demanded payment of the bill of which the above is a copy, and which the said did not pay," be inserted; and the drawer, such protest being sent to him, or notice thereof in writing being given to him, or left at the place of his usual abode within fourteen days thereafter, shall pay the money mentioned in the bill to the person entitled to it, with legal interest from the day of the protest; and he to whom the bill shall be payable neglecting to procure the protest to be made, or due notice thereof to be given, shall be liable for all costs and damages accruing thereby; if the bill shall be lost or shall miscarry, the drawer shall assign and deliver another of the same tenor, sufficient security being

Notice to be given thereof to drawers.

Interest on domestic bills.

Provision in case of their being lost, &c.

given to indemnify him against all persons who may claim under the former.

Sec. 5. If any person or persons shall draw or endorse any bill or bills of exchange, upon any person or persons out of this state, on any other person or persons within any other of the United States of North America, and the same being returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay the contents of the said bill or bills, together with legal interest from the time the said bill or bills were protested, the charges of protest, and ten pounds per cent. advance for the damage thereof, and so proportionable for greater or lesser sums : *Provided however*, that nothing herein contained shall be construed to authorise any person holding a protested bill of exchange, to recover from the endorser thereof any monies on account of such protested bill, unless he shall have given to such endorser reasonable notice in writing of the said protest.

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Inland protested bills.

Interest and damages thereon.

CHAPTER LVIII.

An ACT to reduce into one, the several Acts to prevent Unlawful Gaming.

Approved February 12, 1798.

See Chapter 192 of this Volume, and 134 of Volume III.

SECTION 1. *BE it enacted by the General Assembly,* That all promises, agreements, notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, made, given, granted, drawn, entered into or executed, by any person or persons whatsoever, where the whole or any part of the consideration of such promise, agreement, conveyance or securities shall be for money, or other valuable thing whatsoever, won, laid, or betted at cards, dice tables, tennis bowles, or any other game or games whatsoever, or at any horse-race, cock-fighting, or any other sport or pastime, or any wager whatsoever, or for the reimbursing or re-paying any money knowingly lent or advanced at the time and place of such play, horse-racing, cock-fighting, or other sport or pastime, to any person or persons so gaming, betting or wagering, or that shall at such time or place play, bet or wager, shall be utterly void, frustrate and of none effect, to all intents and purposes whatsoever ; any law,

All gaming contracts, and securities, &c. declared null & void.

1798. custom or usage to the contrary thereof in any wise notwithstanding.

All conveyances, mortgages, sales, &c. vested in the heirs of grantor, &c.

Sec. 2. Any conveyance or lease of lands, tenements or hereditaments sold, demised, or mortgaged, and any sale, mortgage or other transfer of slaves, or other personal estate, to any person, or for his use, to satisfy, or secure money, or other thing by him won of, or lent, or advanced to the seller, lessor, or mortgager; or whereof money, or other thing so won, or lent, or advanced, shall be part, or all of the consideration money, shall enure to the use of the heirs of such mortgager, lessor, bargainer, or vender, and shall vest the whole estate and interest of such person, in the lands, tenements or hereditaments so leased; mortgaged, bargained, or sold, and in the slaves, or other personal estate, so sold, mortgaged, or otherwise transferred, to all intents and purposes, in the heirs of such lessor, bargainer, mortgager, or vender, as if such lessor, bargainer, mortgager, or vender, had died intestate.

How money lost at play may be recovered.

Sec. 3. If any person or persons whatsoever, at any time hereafter within the space of twenty-four hours, by playing at any game or games whatsoever, or by betting on the sides or hands of such as do play at any game or games, shall lose to any one or more person or persons, so playing or betting, the sum or value of forty shillings or more in the whole, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying or delivering the same, or any other person, shall be at liberty within three months then next following, to sue for and recover the money or goods so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by action of debt, founded on this act, to be prosecuted in any court of record within this commonwealth, where the sum or value thereof shall be cognizable, in which action, it shall be sufficient for the plaintiff to alledge that the defendant is indebted to the plaintiff, or received to the plaintiff's use the money so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter. And every person who by this act shall or may be liable to be sued for monies or other things so won as aforesaid, shall be obliged and compeilable to answer up-

on oath, such bill or bills as shall be preferred against him or them, for discovering the money or other things so won at play as aforesaid: *Provided*, that no other person, except the person who hath paid the money or other property so lost, shall have a right to sue for or recover the money or property so paid, until ten days after the payment of the money or property above mentioned.

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CHAPTER LIX.

An ACT to amend an act entitled "an act to Regulate and Discipline the Militia of this Commonwealth."

Approved February 10, 1798.

Vide Vol. I, Chap. 17, and the Notes.

SECTION 1. *BE it enacted by the General Assembly*, That it shall be the duty of the officer commanding at any regimental, battalion or company muster, to have the troops paraded in good order, and the rolls or roll (as the case may be) called over, and shall moreover have their regiment, battalion or company (as the case may be) exercised agreeably to the rules and regulations of baron Steuben, as approved of by congress, at least three hours on each day.

How troops are to be paraded & mustered.

Sec. 2. *And be it further enacted*, That every general, field officer and captain on each muster day that they are by law directed to attend, shall appear on parade in uniform, viz. with a cocked hat, and a coat of blue cloth, faced with scarlet.

Uniform of the officers.

Sec. 3. *And be it further enacted*, That there shall be allowed to the adjutant-general of this state for his services, yearly, the sum of one hundred dollars; and to each brigade inspector, the sum of fifty dollars; and the auditor shall issue warrants quarterly as the same may become due, on the treasurer for payment accordingly.

Allowance to adjutant general and brigade inspector.

Sec. 4. *And be it further enacted*, That every field officer resigning his commission, shall resign to the officer commanding the brigade to which he may belong; and all inferior commissioned officers, to the officer commanding the regiment; but no officer shall resign his commission without giving notice thereof at least three months to the officer to whom it is his duty to resign, previous to his resignation, and shall deliver to his suc-

In what manner officers are to resign.

1798. cessor the rolls and other papers belonging to his command.

Penalty for any neglect, &c. of an officer.

Sec. 5. *And be it further enacted*, That any officer who shall fail or neglect to comply with any of the requisitions of this act, shall forfeit and pay three dollars, to be assessed, collected and accounted for in like manner as other fines are by law recovered and accounted for, agreeably to an act entitled "an act to regulate and discipline the militia of this commonwealth," and to be applied as by the said recited act is directed; and where any new brigade, regiment or battalion is laid off, or any part of one regiment is added to another regiment, the officers in commission which may be included in such brigade, regiment or battalion, shall retain their rank agreeably to the date of their first commissions.

Officers to retain their rank in certain cases.

Time of holding regimental and battalion musters.

Brigade inspectors to attend.

Officers how to be mustered & exercised, & by whom.

Allowance to the adjutant therefor.

Penalty for any neglect.

Sec. 6. The commanding officer of each brigade shall regulate the times of holding regimental and battalion musters within his brigade, by giving notice of the time of holding such muster, at least one month previous thereto, to the several officers commanding of regiments, and the said officers shall issue their orders accordingly; and said commanding officers of brigades shall direct their respective brigade inspectors to attend the several regiment and battalion musters, or so many of them as they can with convenience, to perform the necessary duties of his office as are enjoined them by law.

Sec. 7. *Be it further enacted*, That it shall be the duty of the several adjutants, and they are hereby required, to convene the officers of the regiments to which they respectively belong, at some convenient place within the bounds of the same, at some time to be by the commanding officer of the regiment appointed, prior to the several annual regimental musters, and there to teach the said officers their duty, and the exercise agreeable to the rules and regulations prescribed by law; and there shall be allowed to each adjutant, for the duties aforesaid, two dollars for each day he may be employed for the execution of the above duty enjoined them, of any money arising from fines imposed by this or any other act. And if such commanding officer of the regiment shall fail to appoint a time and place for exercising the officers as aforesaid, or any such officer or the adjutant shall fail to attend, he shall be fined at the discretion of a court martial, in any sum not exceeding one month's pay of the officer so failing.

Sec. 8. *And be it further enacted*, That any officer failing to attend courts martial, or courts for the assessment of fines, or failing to take proper steps to have the fines imposed, collected and accounted for agreeable to law, shall be fined at the discretion of such court, in any sum not exceeding (if a field officer) fifty dollars for every such failure; if a captain, ten dollars; and all subaltern officers, the sum of five dollars, which shall be collected and accounted for as other militia fines are or ought to be collected.

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Penalty on officers failing to attend court martial, &c.

This act shall commence and be in force from the passage thereof.

CHAPTER LX.

An ACT for the Endowment of certain Seminaries of Learning, and for other purposes.

Approved February 10, 1798.

SECTION 1. *BE it enacted by the General Assembly*, That there shall be granted to the trustees of the Kentucky, Franklin, and Salem academies, the following quantities of lands, that is to say, to the Kentucky academy, six thousand acres; to the Franklin academy, six thousand acres; to the Salem academy, six thousand acres; and to the Bethel academy, six thousand acres.

Endowment of certain academies.

Sec. 2. And the trustees of the said academies for the time being, are hereby authorised and empowered, by themselves or agents, within ten months from the passage of this act, to cause to be surveyed the quantity of land hereby allowed to each academy, on any vacant and unappropriated land within this state, on the south side of Green river, each quantity to be laid off in not more than twelve surveys, and no survey to be more than twice as long as wide; and shall moreover cause a plat and certificate of each survey to be returned to the surveyor's office of the county in which such survey may be, to be recorded, and the same shall be returned to the register's office of this state, and the register, without any fee, shall issue grants as in other cases. And the lands so patented shall be vested in the trustees of each academy respectively and their successors for ever; and the lands shall be free from taxes so long as they shall remain the property of the said seminaries.

Trustees to have the land surveyed.

In how many surveys.

To return plat to surveyor's & register's office.

Lands vested in the trustees and free from taxes.

1798. *Sec. 3. And be it further enacted,* That six thousand acres of land be and is hereby vested in Adam Rankin, Peter January, sen. David Logan, William Robinson, David M'Gee, Richard Steele and James Scott, and their successors for ever, in trust for the use and benefit of the Lexington seminary; also six thousand acres for the use and benefit of the Jefferson seminary, to be vested in John Thompson, William Croghan, Alexander S. Bullitt, James Meriwether, John Thruston, Henry Churchill, William Taylor and Richard Clough Anderson, or a majority of them and their successors for ever, in trust for the benefit of the same; the said land to be entered, surveyed and patented by the said trustees, in the manner directed in the cases of the other academies in this act mentioned; and the said trustees and their successors for ever, shall be vested with similar powers over the same.

Vacancies how filled.

Sec. 4. The said trustees shall have power from time to time to fill any vacancies which may happen in their own body, and shall in all respects whatsoever, so far as the cases will apply, be governed by as enlarged rules and regulations, and be invested with as ample power and authority, as the trustees of either of the aforesaid academies are by this or any other act invested.

How the land may be disposed of, & for what.

Sec. 5. It shall be lawful for the trustees of either of the said academies or seminaries, to sell one-third of the lands hereby granted to the said academies and seminaries, and no more, without the future consent of the legislature, for the purpose of erecting their public buildings, purchasing a library and philosophical apparatus; provided that the lands hereby granted shall not be surveyed on any lands set apart for any Indian tribe.

Provido.

Provided however, That no salt lick or spring, nor any bank, bed or pit of mine or ore of any valuable metal or mineral, with one thousand acres, and including the same, as near the centre of a square as prior claims will admit of, shall be taken into any survey of land hereby granted.

Recital.

And whereas it is certain that however particular forms of government are better calculated than others to protect individuals in the free exercise of their natural rights, and are at the same time themselves better guarded against degeneracy, yet experience hath shewn that even under the best forms, those entrusted with

power have, in time and by slow operation, perverted it into tyranny, and it is believed that the most effectual means of preventing this, would be to illuminate, as far as possible, the minds of the people at large, and more especially to give them knowledge of those facts which history exhibiteth, that, possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes: And whereas it is generally true, that that people will be happiest whose laws are best, and are best administered, and that laws will be wisely formed and honestly administered in proportion as those who form and administer them are wise and honest, whence it becomes expedient, for promoting the public happiness, that those persons whom nature hath endowed with genius and virtue, should be rendered by liberal education, worthy to receive and able to guard the sacred deposit of the rights and liberties of their fellow citizens; and that to aid and accelerate this most desirable purpose, must be one of the first duties of every wise government:

1798.

Sec. 6. *Be it therefore enacted by the General Assembly,* That all the lands lying within the bounds of this commonwealth, on the south side of Cumberland river, below Obey's river, which is now vacant and unappropriated, or on which there shall not be, at the passage of this act, any actual settler under the laws of this state for the relief of settlers south of Green river, shall be and the same are hereby reserved by the general assembly, to be appropriated as they may hereafter from time to time think fit, to the use of the seminaries of learning throughout the different parts of this commonwealth; and no person or persons shall after one month subsequent to the passage of this act, be permitted to settle on or take up any vacant land on the south side of Cumberland river as aforesaid, until the further order of the legislature; any law or laws to the contrary notwithstanding.

Unappropriated lands within certain bounds reserved, to be hereafter appropriated to the use of seminaries of learning.

CHAPTER LXI.

An ACT to prevent Illegal Surveys on the South side of Green River.

Approved February 12, 1798.

See the preface to Chap. 220, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,* That every person who shall in future, be guilty of making surveys on certain warrants

Penalty for making surveys on certain warrants

1798. king any survey on a military land warrant, issued by the state of Virginia, on which an entry was not made on or before the first day of May, 1792, unless the same shall have been heretofore authorised by law, and all persons aiding or assisting therein, shall forfeit and pay the sum of five hundred dollars, to be recovered by bill, plaint or information, in any district court or court of quarter sessions in this state, one half to the use of the informer, and the other to the use of the common-wealth.

How to be recovered.

Copies of entry books in the surveyors' offices of state and continental lines to be made out.

To be lodged in the register's office.

Provision in case the surveyors fail to make them out.

Surveyors to shew entries if called on when making a survey.

Penalty for neglect.

Allowance to surveyors for

Sec. 2. *And be it further enacted*, That the surveyors of the Virginia state line, and continental line, holding their offices in this state, shall copy from the books in their respective offices, all the entries for land on the south side of Green river, made by virtue of any warrant granted for military services, in well bound books, which they shall provide for that purpose, and shall certify the same to be truly copied from the originals in their offices ; and the said surveyors shall lodge the books containing the copies of the entries aforesaid, in the register's office of this state, and a copy therefrom, of any entry, shall be admitted as evidence, as copies now are that are given by either of said surveyors.

Provided however, That if the said surveyors shall not copy their books as aforesaid, within three months from the passage of this act, the governor shall appoint one or more persons to take copies of the entries aforesaid, and lodge them as is by this act directed, and they shall be allowed for each entry, the sum as is herein allowed to the said surveyors, to be paid in like manner.

Sec. 3. *And be it further enacted*, That any person making a survey on any entry on the south side of Green river, shall shew the entry on which such survey is made, and permit a copy thereof to be taken, if demanded, by any person requiring the same ; and if such entry is not attested by the principal surveyor, register of the land-office, or the surveyor of the county wherein the land may lie, such survey, if forbidden by any person, shall not be made : and any person who shall proceed contrary thereto, shall forfeit and pay fifty dollars, to be recovered and applied as other fines are directed by this act.

Sec. 4. There shall be allowed to each of the surveyors aforesaid for a copy of each entry, the sum of six

pence, to be paid as soon as the said copies are lodged in the register's office, and the governor shall certify the same to the auditor, who shall issue his warrant on the treasurer for payment accordingly. ^{1798.} ^{copying entry books.}

This act shall be in force from the passage thereof.

CHAPTER LXII.

An ACT to reduce into one, the several Acts for establishing a Land-Office.

Approved February 6, 1798.

Vide Vol. I. Chap. 11, and the Notes.

SECTION 1. *BE it enacted by the General Assembly,* A land-office That a land-office shall be, and the same is hereby con- established. stituted, for the purposes hereafter mentioned. A regis- A register to be ter of the said office shall be appointed, who shall hold his appointed du- office during good behaviour, and shall give bond with ring good beha- sufficient security to the governor of this commonwealth, viour. To give bond. in the penalty of five thousand pounds current money, or on failure of which, his office shall be considered as vacated. If any vacancy shall happen by death, resig- Vacancy how nation, removal, or otherwise, of a register, during the filled. recess of the general assembly, the governor may appoint some other person, giving bond and security in like manner, to act as register of the said office.

Sec. 2. *Be it further enacted,* That all records (or co- Certain papers pies thereof, as the case may be) of patents or grants for to be lodged in the land-office. lands, heretofore issued, with all papers and documents relating thereto, and certificates of surveys of lands now in the Virginia register's office, and not patented, shall, when obtained, be removed and lodged in the said office for their safe keeping; and all future grants of lands shall issue from the said office in the manner and form How grants shall issue there. on. heretofore issued from the register's office of Virginia; all certificates of surveys which have been or hereafter may be made and recorded in the surveyor's office, shall be returned to the said register's office, in order that grants may issue thereon, in like manner as directed by law. And all grants shall be issued on parchment.

Sec. 3. That all the fees that shall hereafter become Fees to be paid into the treasury. due for services of every nature and kind whatsoever to be performed in the land-office, shall be accounted for with the auditor, and paid regularly into the treasury at

1798. the end of every six months, in the following manner:
 The register shall account for the whole profits, making
 oath or affirmation (as the case may be) that the fees so
 accounted for, are the whole profits accruing from the
 said office, so far as he knoweth or believeth, up to the
 date of such account, and moreover, his account of fees
 received, shall be fairly stated and compared by the au-
 ditor with the books of his office, before the account shall
 be passed; and if the register of the land-office shall at
 any time fail to account according to the directions of
 this act, for the space of six months, he shall forfeit and
 pay the sum of two thousand pounds, to be recovered by
 motion in the name of the governor for the time being,
 in any court of record, by the attorney-general, on thirty
 days previous notice; and in all cases of motions for
 money due from the register, the *onus probandi* shall lie
 on the defendant.

Sec. 4. *And be it further enacted*, That on receiving
 each survey into the register's office, the fees established
 by law that will accrue on the same, including the issu-
 ing the grant thereupon, shall be paid down; and if the
 register shall credit any person, he shall account for the
 fees so credited, in the same manner as if they had been
 received.

Sec. 5. Whereas in some instances grants have issu-
 ed in the names of persons who were deceased prior to
 the date of the grant, and cases of the same nature may
 happen in future: *Be it enacted*, That in all such cases,
 the land conveyed shall descend to the heir, heirs or de-
 visees, in the same manner as it would do had the grant
 issued in the life time of such decedent.

Sec. 6. *And be it further enacted*, That the composi-
 tion money due on settlement rights, granted to certain
 poor persons, hereafter to be returned to the register's
 office, be paid in specie to the register, and by him paid
 into the public treasury, except where the money hath
 been paid into the treasury of Virginia.

Sec. 7. The register of the land-office, and the secre-
 tary of state, shall furnish fuel, presses, books and other
 necessary implements for the use of their said offices;
 an account of which being presented to and approved of
 by the governor, shall be paid by the treasurer, on a war-
 rant from the auditor.

Register to ren-
 der an account
 on oath.

How it shall be
 examined.

Penalty for
 failing to ren-
 der an account.

How recovera-
 ble.

Register ac-
 countable if he
 credits any fees.

When a grant
 issues to a dece-
 dent, the land
 shall descend,
 &c.

Composition
 money to be
 paid in specie.

Implements of
 office allowed
 to register and
 secretary of
 state.

VI. YEAR OF THE COMMONWEALTH.

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CHAPTER LXIII.

1798.

*An ACT to reduce into one, the several Acts respecting
Slaves, Free Negroes, Mulattoes and Indians.*

Approved February 8, 1798.

See the prelection to Chap. 161, of Vol. I.

SECTION 1. *BE it enacted by the General Assembly,*
That no persons shall henceforth be slaves within this
commonwealth, except such as were so on the seven-
teenth day of October, in the year one thousand seven
hundred and eighty-five, and the descendants of the fe-
males of them.

Who shall be
deemed slaves.

Sec. 2. No negro or mulatto shall be a witness, except
in pleas of the commonwealth against negroes or mulat-
toes, or in civil pleas where negroes or mulattoes alone
shall be parties.

In what cases
they may be
witnesses.

Sec. 3. No slave shall go from the tenements of his
master, or other person with whom he lives, without a
pass, or some letter or token whereby it may appear that
he is proceeding by authority from his master, employer
or overseer; if he does, it shall be lawful for any per-
son to apprehend and carry him before a justice of the
peace, to be by his order punished with stripes, or not,
in his discretion.

Not to go from
home without
passes.

Sec. 4. And if any slave shall presume to come and
be upon the plantation of any person whatsoever, with-
out leave in writing from his or her owner or overseer,
not being sent upon lawful business, it shall be lawful for
the owner or overseer of such plantation to give or order
such slave ten lashes on his or her bare back, for every
such offence.

Coming on the
plantation of o-
thers without
leave from their
masters, may be
whipped. —

Sec. 5. No negro, mulatto, or Indian, whatsoever,
shall keep or carry any gun, powder, shot, club, or other
weapon whatsoever, offensive or defensive, but all and
every gun, weapon and ammunition found in the poses-
sion or custody of any negro, mulatto, or Indian, may be
seized by any person, and upon due proof thereof made
before any justice of the peace of the county where such
seizure shall be, shall by his order be forfeited to the
seizor for his own use; and moreover every such offen-
der shall have and receive by order of such justice any
number of lashes not exceeding thirty-nine, on his or her
bare back, well laid on, for every such offence.

Not to keep or
carry arms.

1798.

Except those living on frontiers licenced by justices of the peace.

Sec. 6. *Provided nevertheless*, That every free negro, mulatto, or Indian, being a house-keeper, may be permitted to keep one gun, powder and shot; and all negroes, mulattoes and Indians, bond or free, living at any frontier plantation, may be permitted to keep and use guns, powder, shot and weapons offensive and defensive, by license from a justice of the peace of the county wherein such plantations lie, to be obtained upon the application of free negroes, mulattoes or Indians, or by the owners of such as are slaves.

Riots, routs, &c how punished.

Sec. 7. Riots, routs, unlawful assemblies, trespasses and seditious speeches by a slave or slaves, shall be punished with stripes, at the discretion of a justice of the peace, and he who will, may apprehend and carry him, or her, or them before such justice.

No person shall permit the slaves of others to remain on his plantation.

Sec. 8. And to prevent the inconveniencies arising by the meetings of slaves: *Be it further enacted*, That if any master, mistress or overseer of a family, shall knowingly permit or suffer any slave not belonging to him or her to be and remain upon his or her plantation above four hours at one time, without leave of the owner or overseer of such slave, he or she so permitting shall forfeit and pay two dollars for every such offence; and every owner or overseer of a plantation who shall so permit or suffer more than five negroes, or slaves, other than his or her own, to be and remain upon his or her plantation or quarter, at any one time, shall forfeit and pay five shillings for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county where such offence shall be committed.

Provide.

Sec. 9. *Provided always*, That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting, with their owner's or overseer's leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves, on their owner's or overseer's business, at any public mill, so as such meeting be not in the night time, nor on a Sunday, nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church and attending to divine service on the Lord's day, or any other day of public worship.

Sec. 10. If any white person, free negro, mulatto or

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Indian, shall at any time be found in company with slaves at any unlawful meeting, or shall harbor or entertain any slave without the consent of his or her owner, such person being thereof convicted before any justice of the peace, shall forfeit and pay fifteen shillings for every such offence, to the informer, recoverable with costs before such justice ; or on failure of present payment, shall receive, on his or her bare back, twenty lashes, well laid on, by order of the justice before whom such conviction shall be.

1798.

^{Punishment}
of persons pre-
sent at unlaw-
ful meeting of
slaves, or har-
boring the slaves
of others.

Sec. 11. And every justice of the peace upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself or any other justice of his county, to be dealt with as this act directs ; and every justice failing herein, shall forfeit and pay fifty shillings for every such failure. And every sheriff who shall fail, upon knowledge or information of such meeting, to endeavor to suppress the same and bring the offenders before some justice of the peace, to receive due punishment, shall be liable to the like penalty of fifty shillings, both which penalties shall be to the informer, and recoverable with costs before any justice of the peace. And every under-sheriff or constable who, upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same and apprehending the persons so assembled, shall forfeit and pay three dollars for every such failure, to the informer, recoverable with costs before any justice of the county wherein such failure shall be.

Duty of justi-
ces and other
officers in sup-
pressing unlaw-
ful meetings.

Sec. 12. No person whatever shall buy, sell or receive of, to or from any slave, any coin or commodity whatsoever, without the leave or consent of the master or owner of such slave in writing, expressive of the article so permitted to be bought or sold ; and if any person shall presume to deal with any slave without such leave or consent, he or she so offending shall forfeit and pay to the master or owner of such slave, four times the value of such article so bought, sold or received, with full costs, by action upon the case in any court of quarter sessions in this commonwealth, where the sum shall amount to five pounds or upwards, otherwise to be recovered by way of warrant, before some justice of the peace of the

Penalty for
dealing with a
slave without his
master's leave.

1798.

county in which the matter shall have originated, and shall also forfeit and pay the further sum of four pounds to any person who will sue for the same, with costs, before any justice of the peace; or on failure or refusing so to pay, shall by order of such justice be committed to prison until he or she make such payment; and any slave offering to sell without such permit, shall receive ten lashes by order of any justice of the peace before whom he or she is convicted.

Penalty for
lifting hand a-
gainst any per-
son.

Sec. 13. If any negro, mulatto, or Indian, bond or free, shall at any time lift his or her hand in opposition to any person not being a negro, mulatto or Indian, he or she so offending, shall, for every such offence, proved by the oath of the party before a justice of the peace of the county where such offence shall be committed, receive thirty lashes on his or her bare back, well laid on, by order of such justice.

Penalty for suf-
fering a slave to
go at large and
trade as a free
man.

Sec. 14. And whereas many owners of slaves in consideration of stipulated wages to be paid by such slaves, license them to go at large to trade as free men, which is found to be a great encouragement to the commission of thefts and other evil practices by such slaves, in order to enable them to fulfil their agreements with their masters or owner; for prevention whereof, *Be it further enacted*, That from and after the commencement of this act, if any master or owner of any slave, shall license such slave to go at large and trade as a free man as aforesaid, the master or owner shall forfeit and pay the sum of ten pounds current money, to be applied towards lessening the county levy where such slave shall be found going at large and trading as aforesaid, to be recovered by action of debt in any court of record within this commonwealth; and if after conviction such slave shall be so found going at large and trading, the master or owner shall again be liable to the like penalty, to be recovered and applied as aforesaid, and so as often after conviction as such slave shall be so found going at large and trading.

Slaves suffered
to go at large
and hire them-
selves out, may
be apprehended
and sold.

Sec. 15. If any person shall permit or suffer his or her slave to go at large and hire himself or herself out, it shall be lawful for any person to apprehend and carry every such slave before a justice of the peace in the county where apprehended; and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county,

there to be safely kept until the next court, when, if it shall be made appear to the court that the slave so ordered to jail hath been permitted or suffered to hire himself or herself out contrary to the meaning of this act, it shall be lawful for the court, and they are hereby required to order the sheriff of the county to sell and dispose of every such slave for ready money, at the next court held for the said county, notice being given by the sheriff at the court-house door at least twenty days before the sale.

1798.

Sec. 16. Twenty-five per centum upon the amount of the sale of every slave so going at large, and hiring out him or herself, shall be applied by the court ordering such sale, towards lessening the county levy, and the residue shall be paid by the sheriff, after deducting five per centum for his trouble, and the jailor's fees, to the owner of such slave. Proceeds of the sale, how to be disposed of.

Sec. 17. The justices of the court of quarter sessions shall be justices of the court of oyer and terminer, for trying any slave charged with a capital offence, and they shall order the sheriff to empanel a jury of twelve men from among the bystanders, for ascertaining the matters of fact, and in all other respects proceed agreeably to the rule established in the district court, except that no grand jury shall be empannelled on the indictment of any slave. Justices of the court of quarter sessions to be a court of oyer and terminer for the trial of slaves.

Sec. 18. *Provided always*, That when judgment of death shall be passed upon any such offender, there shall be thirty days at least between the time of passing judgment and the day of execution, except in cases of conspiracy, insurrection or rebellion. One being detained in slavery and having commenced an action to assert his freedom, shall be prosecuted and tried for any such crime in the same manner as a free man ought to be prosecuted and tried. Provida.

Sec. 19. And for a declaration of what shall be deemed to be legal evidence in such cases, *It is further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes or Indians, bond or free, with pregnant circumstances, as to them shall appear convincing. What shall be legal evidence against them.

Sec. 20. When any negro, mulatto, or Indian, whatsoever, shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given a- In what case they shall be allowed clergy.

1798.

against him or her upon such conviction, but he or she shall be burnt in the hand, by the jailor, in open court, and suffer such other corporeal punishment as the court shall think fit to inflict.

Punishment of slaves, &c. for giving false testimony.

Sec. 21. And to the end such negroes, mulattoes, or Indians, not being Christians, as shall be produced in evidence on the trial of any slave for a capital crime, may be under the greater obligation to declare the truth, *It is hereby further enacted*, That where any such negro,

mulatto, or Indian, shall be found, upon due proof made, or pregnant circumstances appearing to any court within this commonwealth, to have given a false testimony, every such offender shall without further trial be ordered by the said court to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping-post; and at every such trial of slaves for capital offences, the person first named in the commission then sitting, shall, before the examination of any negro, mulatto or Indian, not being a Christian, charge such evidence to declare the truth, which charge shall be in the words following, to wit—"You are brought hither as a witness, and by the direction of the law I am to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth, and that if it be found hereafter that you tell a lie, and give false testimony in this matter, you must for so doing, receive thirty-nine lashes on your bare back, well laid on, at the common whipping-post."

A charge to slaves when about to give testimony.

Master may appear in defence of his slave.

Sec. 22. *Provided always*, That the master or owner of any slave, may appear at such arraignment and trial, and make what just defence he can for such slave, so that such defence do not relate to any formality in the proceedings on the trial.

Former laws repealed.

Sec. 23. *Be it further enacted*, That all laws or parts of laws heretofore in force in this state, respecting the importation of slaves, shall be and the same are hereby repealed.

Master to be paid the value of his slave, who shall be executed.

Sec. 24. *Be it further enacted*, That it shall be the duty of the several courts of quarter sessions within this commonwealth, when they determine that any slave shall suffer death agreeably to law, to value such slave; and the auditor of public accounts is hereby authorised and required to issue his warrant on the treasury for the amount, in favor of the owner, on his producing to the said

auditor, the certificate of the clerk of said court, that said slave or slaves were condemned, and the sheriff's certificate that said slave or slaves were executed or perished before execution, and the treasurer is required to pay the same.

1798.

Sec. 25. *And be it further enacted*, That no slave shall be imported into this state from any foreign country, nor shall any slave who has been imported into the United States from any foreign country since the first day of January, one thousand seven hundred and eighty-nine, or who may hereafter be imported into the United States from any foreign country, be imported into this state, under the penalty of three hundred dollars.

Importation of slaves from a foreign country prohibited, &c.

Sec. 26. *And be it further enacted*, That no slave or slaves, shall be imported into this state as merchandise, and any person offending herein, shall forfeit and pay the sum of three hundred dollars for each slave so imported, to be recovered by action of debt or information, in any court having cognizance of the same, one half to the prosecutor, the other half to the use of the commonwealth.

Importation of slaves as merchandise prohibited, &c.

This act shall not be extended to prevent any citizen of this state bringing slaves for his own use, provided they have not been brought into the United States from any foreign country, since the said first day of January, one thousand seven hundred and eighty-nine; nor shall it be construed to prevent persons emigrating to this state bringing their slaves with them, but either a citizen of this state or persons emigrating to this state, may bring or cause to be brought to this state, any slave or slaves, not prohibited by this act.

Not to extend to persons emigrating to this state.

Sec. 27. *Be it further enacted*, That it shall be lawful for any person by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal, attested and proved in the county court by two witnesses, or acknowledged by the party in the court of the county where he or she resides, to emancipate or set free his or her slave or slaves, who shall thereupon be entirely and fully discharged from the performance of any contract entered into during his servitude, and enjoy his full freedom as if they had been born free. And the said court shall have full power to demand bond and sufficient security of the emancipator, his or her executors or administrators, as the case may

How slaves may be emancipated.

Matter to support those who are aged or infirm, &c.

1798. be, for the maintenance of any slave or slaves that may be aged or infirm either of body or mind, to prevent him, her or them becoming chargeable to the county; and every slave so emancipated, shall have a certificate of his freedom from the clerk of such court, on parchment, with the county seal affixed thereto, for which the clerk shall charge the emancipator five shillings; saving, however, the rights of creditors, and every person or persons, bodies politic and corporate, except the heirs or legal representatives of the person so emancipating such slave or slaves.

Certificate of emancipation to be given to the slave.

Sec. 28. All negro, mulatto or Indian slaves, in all courts of judicature and other places within this commonwealth, shall be held, taken and adjudged to be real estate, and shall descend to the heirs and widows of persons departing this life, as lands are directed to descend in and by an act of the general assembly entitled "an act directing the course of descents."

Slaves to be deemed real estate.

Sec. 29. *Provided*, That all such slaves shall be liable to the payment of debts, and may be taken by execution for that end, as other chattels or personal estate may be.

But liable to execution.

Sec. 30. *Provided also*, That no such slave shall be liable to be escheated by reason of the decease of the proprietor for the same without lawful heirs, but all such slaves shall in that case be accounted and go as chattels and other estates personal.

Not liable to escheat.

Sec. 31. No person selling or alienating any such slave otherwise than by gift, marriage settlement, deed of trust, or mortgage, shall be obliged to cause such sale or alienation to be recorded.

Sale of a slave need not be recorded.

Sec. 32. It shall and may be lawful for any person to sue for and recover any slave or damage for the detention, trover or conversion thereof, by action personal, as might have been done if this act had never been made.

Personal action may be brought for slaves.

Sec. 33. Whenever any person shall by bargain and sale, either with or without deed, by his last will and testament, in writing, or by any nuncupative will, bargain, sell, dispose of or bequeath any slave or slaves, such bargain, sale or bequest shall transfer the absolute property of such slave or slaves to such person or persons to whom the same shall be so sold or bequeathed, in the same manner as if such slave or slaves were a chattle, and no remainder of any slave or slaves shall or may be limited

Sales and bequests of slaves shall vest absolute property.

by any deed or last will and testament in writing, of any person whatsoever, otherwise than the remainder of a chattle personal by the rules of common law can or may be limited, except in the manner hereinafter mentioned and directed.

1798.

Sec. 34. Where any slave or slaves have been or shall be conveyed or bequeathed, or have or shall descend to any *feme covert*, the absolute right, property and interest of such slave or slaves, is hereby vested and shall accrue to and be vested in the husband of such *feme covert*; and where any *feme sole* is or shall be possessed of any slave or slaves, as of her own proper slave or slaves, the same shall accrue to and be absolutely vested in the husband of such *feme*, when she shall marry.

Slaves of a wife
to be vested in
the husband.

Sec. 35. Any infant above the age of eighteen years, by his or her last will and testament, in writing, may dispose of and bequeath the absolute right, property and interest of any slave or slaves whereof he or she shall be possessed.

Infants of the
age of 18 years
may bequeath
slaves by will.

Sec. 36. No slave or slaves whatsoever shall be forfeited, except in such cases where the lands and tenements of the person incurring the forfeiture is, should or might be forfeited.

Slaves not liable
to forfeiture ex-
cept in certain
cases.

Sec. 37. No executor or administrator hath or shall have any power to sell or dispose of any slave or slaves of his testator or intestate, except for the paying and satisfying the just debts of such testator or intestate, and then only where there is not sufficient of the personal estate of such testator or intestate to satisfy and pay such debts; and in that case it shall and may be lawful for the executor or administrator to sell and dispose of such slave or slaves, as shall be sufficient to raise so much money as the personal estate falls short of the payment of the debts.

Slaves not to be
sold by execu-
tors, &c. except
for the payment
of debts.

Sec. 38. It shall and may be lawful for any person or persons whatsoever, by deed executed in his, her or their life times, or by his, her or their last will and testament, wherein any lands or tenements shall hereafter be settled, conveyed or devised for life or lives, to settle, convey or devise any slave or slaves, and in such deed or last will to declare that such slave or slaves, and their increase so long as any of them shall be living, shall descend, pass and go as part of the freehold, to such person or persons to whom such lands and tenements shall

Slaves annexed
to land shall pass
with the land.

1798.

be so conveyed or devised, and to whom the same shall from time to time descend and come; and such declaration shall be good and effectual in law to annex such slave or slaves to the freehold and inheritance of such lands and tenements, and they and their increase so long as any of them shall be living, shall descend, pass and go in possession, reversion and remainder with such lands and tenements; or where any person shall by his deed executed in his life time, or by his last will and testament in writing, settle, convey or devise any lands and tenements for life or lives, and shall in the same deed or will, settle, convey or devise any slave or slaves with the same limitation or limitations with which such lands and tenements shall be so settled, conveyed or devised, such limitation or limitations shall amount to a declaration of the intent of the party selling, conveying or devising the same, that the same should be annexed to such lands and tenements, and shall descend, pass and go therewith from time to time as aforesaid.

How a widow
may demand
dower in slaves.

Sec. 39. Where any person or persons have or shall have right to demand dower, or have partition of any slave or slaves, such person or persons shall and may exhibit a bill in equity for that purpose against the person or persons of whom the same may be demanded, and the court before whom such bill shall be exhibited, shall compel the defendant or defendants to answer, and shall and may proceed upon such bill and answer, although the defendant or defendants, or any of them, be under the age of twenty-one years, according to the course and rules of equity, and shall and may make such decree for the assignment of dower, or making such partition, in such manner as shall be most agreeable to equity; and such assignment of dower, or partition, shall be as effectual as if the same were made in the ordinary methods of the common law.

Where an equal
division of slaves
cannot be made.

Sec. 40. Where one or more slaves shall descend from a person dying intestate, and an equal division thereof cannot be made in kind, on account of the nature of the property, it shall be lawful for the court of chancery of the county by which the administration of the estate of the intestate was granted, to direct the sale of such slave or slaves, and the distribution of the money arising therefrom, according to the rights of each claimant: *Provided always*, that each claimant shall be first

duly summoned, to shew cause, if any he can, against such sale. 1798.

Sec. 41. And whereas many frauds have been committed by means of secret gifts, made, or pretended to have been made, of slaves, by parents and others, who have notwithstanding remained in possession of such slaves, as visible owners thereof, whereby creditors and purchasers have been frequently involved in expensive law suits, and often deprived of their just debts and purchases; for prevention whereof, *Be it enacted*, that no gift or gifts of any slave or slaves, shall be good or sufficient to pass any estate in such slave or slaves, to any person or persons whatsoever, unless the same be made by will, duly proved and recorded, or by deed in writing, to be proved by two witnesses at the least, or acknowledged by the donor, and recorded in the county court or court of quarter sessions where one of the parties lives, or in the district court or court of appeals, within eight months after the date of such deed or writing.

Recital.

Gifts of slaves without deed or will duly proved and recorded void.

Sec. 42. *Provided always*, That this act shall be construed to extend only to the gift of slaves whereof the donors have notwithstanding such gifts remained in possession, and not to gifts of such slaves as have at any time come into the actual possession of, and have remained with the donee, or some person claiming under such donee.

Provide.

Sec. 43. *Provided always*, That nothing in this act contained shall be construed to alter any adjudication heretofore made, nor to affect the interest of any *bona fide* purchaser, for a valuable consideration, or creditor of the donor before the donee hath been at least three years in the possession of the slave or slaves under such gift, nor in any manner to restrain or affect the operation of the act of limitation.

Provide.

CHAPTER LXIV.

An ACT to reduce into one, the several Acts establishing District Courts in this Commonwealth.

Approved February 12, 1798.

See the prelections to Chaps. 201 and 262, of Vol. I.

WHEREAS the delays inseparable from the present constitution of the court of appeals, is equal to a denial

Preamble.

1798. of justice, and the expence occasioned thereby burthen-
some to suitors :

Original jurif-
diction of the
court of appeals
taken away.

Sec. 1. *Be it therefore enacted by the General Assem-
bly.* That the original jurisdiction of the court of appeals,
shall be, and the same is hereby taken away.

State divided
into districts, &
a supreme court
to be holden in
each.

Sec. 2. *And be it further enacted by the General As-
sembly,* That this commonwealth shall be divided into dis-
tricts, and a supreme court holden in each, in the manner
and at the times and places hereinafter mentioned, that
is to say, the district composed of the counties of Jeffe-
son, Nelson, Bullitt, Washington, Hardin, Greene, War-
ren, Christian and Logan, on the first Monday in the
months of January, May and September in every year—
the district composed of the counties of Shelby, Frank-
lin and Woodford, on the first Monday in the months of
April, August and December in every year—the dis-
trict composed of the counties of Campbell, Bracken and
Mason, on the second Monday in the months of Febru-
ary, June and October in every year—the district com-
posed of the counties of Bourbon and Harrison, on the
first Monday in the months of March, July and Octo-
ber in every year—the district composed of the counties
of Fayette, Scott, Clarke, Montgomery and Madison, on
the third Monday in the months of March, July and
October in every year—the district composed of the
counties of Mercer, Garrard and Lincoln, on the third
Monday in the months of April, August and Decem-
ber in every year. *Provided however,* that no change
made by this act, as to the time of holding said courts,
shall operate so as to injure any process already issued,
or which may be issued returnable to any day, as now es-
tablished by law ; but the said process may be returned
to the courts as now established, and the rules taken as
in other cases.

Provided.

Courts when &
where held.

In Bairdstown.

In Frankfort.

In Washington.

Sec. 3. *And be it enacted,* That the court for the dis-
trict composed of the counties of Jefferson, Nelson,
Bullitt, Washington, Hardin, Greene, Warren, Christian
and Logan, shall be held at the court-house in Bairds-
town : the court for the district composed of the coun-
ties of Shelby, Franklin and Woodford, shall be held in
the capitol, in the town of Frankfort : the court for the
district composed of the counties of Campbell, Brac-
ken, and Mason, shall be held at the court-house in the
town of Washington : the court for the district compo-

sed of the counties of Bourbon and Harrison, at the 1798.
 court-house in the town of Paris : the court for the dis-
 trict composed of the counties of Fayette, Scott, Clarke, ^{In Paris.}
 Montgomery and Madison, shall be held at the court-
 house in the town of Lexington ; and the court for the ^{In Lexington.}
 district composed of the counties of Mercer, Garrard,
 and Lincoln, shall be held in Danville. ^{In Danville.}

Sec. 4. The counties which may hereafter be made,
 shall, if taken from one county, or from two or more ^{When a new}
 counties, lying in the same district, remain in the dis- ^{county is erect-}
 trict to which they formerly belonged ; and if taken ^{ed, to what dis-}
 from two or more counties, lying in different districts, ^{trict it shall be}
 remain in the district to which the greater part of the ^{annexed.}
 said counties formerly belonged, until it be otherwise or-
 dered by law. And the jurisdiction of the said courts
 and judges thereof, shall in all cases extend to such parts
 of the new counties, as was not before the erection of
 the said new county, within the limits of their jurisdic-
 tion.

Sec. 5. Each district court shall sit, if the business ^{The length of}
 require it, ten days successively, Sundays exclusive, and ^{each term.}
 no longer.

Sec. 6. *And be it further enacted by the General As-* ^{Six judges to be}
sembly, That there shall be six judges appointed, whose ^{appointed.}
 duty it shall be to attend the said district courts, allot- ^{How to be al-}
 ting among themselves, twice in every year, the districts ^{lotted to each}
 they shall respectively attend at the succeeding terms ^{district.}
 thereof, two to each court, who shall be judges of the
 court to which they shall be allotted : which allotment
 shall be certified under the hands and seals of the judges
 making the same, and entered upon the records of the
 district courts at their next term, to be holden respec-
 tively : and the said judges shall constitute a court for
 such district. In case of a temporary appointment of a ^{In case of a va-}
 judge by the executive, after the half yearly allotment ^{cancy the suc-}
 of districts as aforesaid, such judge shall take the place ^{cessor to take}
 of him in whose place he was appointed : *Provided ne-* ^{place of his pre-}
vertheless, That if any one of the said judges shall not ^{decessor.}
 attend the court to which he shall be so allotted, by sick-
 ness, disability or otherwise, or if either of the judges
 attending shall be interested, or on that account chuse ^{Regulations}
 not to sit in any particular cause, that in such case the ^{where a judge}
 other judge shall have power to call in and associate with ^{is interested, &c}
 him, some other the most convenient judge of the said

1798.

How a court
may be consti-
tuted in crimi-
nal cases.

Proceedings in
criminal cases.

Judges to take
an oath, and the
form thereof.

district courts who may not be in session ; which judge so called in, shall, for such term, possess the same powers and authority as if he had been allotted to such district ; but in case he cannot be thus obtained, the other judge shall constitute a court, under the following restrictions, to wit: in all criminal cases, where the charge shall be of such nature, as in case of conviction, to subject the party to capital punishment, or burning in the hand, two judges shall be necessary to proceed upon the trial of the issue, whether in law or fact : *Provided always*, That if only one judge shall attend the court, and any prisoner shall notwithstanding petition to be brought to trial, in such case, one judge shall constitute a court for such purpose. When two judges shall attend, all questions arising in criminal cases and submitted to the court, in case the court shall be divided, shall be considered as adjudged in favor of the criminal ; and if the court shall be divided in the final judgment or sentence, judgment shall be entered up in favor of the prisoner, and he forthwith discharged : when two judges shall not attend, all criminal cases depending in said court, and not tried upon the consent and petition of the prisoner, where the punishment shall be death or burning in the hand, shall stand continued over till the next court to be held for that district ; and if two judges do not attend at such next court, every prisoner whose cause has been so continued, shall be bailed as of right, which bail shall be according to the degree of the offence and ability of the prisoner ; and when but one judge attends, and a criminal shall petition to be tried, and the jury on the trial of such criminal shall not agree in their verdict, it shall be no bar to such criminal's being bailed ; and if such prisoner shall attend on the first day of the next succeeding term, and render himself according to his recognizance, and there should not be a sufficient court to try such prisoner, on or before the third day of that court, such prisoner shall be forthwith discharged.

Sec. 7. Each judge before he enters upon the duties of his office, shall take the following oath or affirmation, viz : I, A. B. do solemnly swear, or affirm, (as the case may be,) that I will administer justice without respect to persons, and do equal right to the poor as well as to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as a judge

of the district courts in Kentucky, according to the best of my abilities and understanding, agreeably to the constitution and laws of the commonwealth. So help me God." Omitting in case of an affirmation, the words "So help me God." Which oath or affirmation may be administered by any justice of the peace, a certificate of the taking of which, shall be recorded in the district court.

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Sec. 8. If a district judge shall not attend the first day of any district court, such court shall stand adjourned from day to day, until a court shall be made, if that shall happen before four of the clock in the afternoon on the sixth day. Regulations respecting the adjournment of the courts.

Sec. 9. If a court shall not sit in any term, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters ready for their decision, all such matters and things depending in court and undetermined, shall stand continued until the next succeeding term. Causes continued when a court shall not sit or does not finish the business.

Sec. 10. If, from any cause, the court shall not sit on any day in a term after it shall have been opened, there shall be no discontinuance, but so soon as the cause is removed, the court shall proceed to business, until the end of the term, if the business depending before them be not sooner dispatched. No discontinuance for want of a court.

Sec. 11. The district courts respectively, shall have jurisdiction over all persons, and in all causes, matters, or things, at common law or in chancery, arising in their districts, except in cases of assault and battery, trespass, and actions of slander, or where the debt or demand shall be under fifty pounds current money, in which cases they shall have no jurisdiction whatsoever, except where the same shall be brought before them by either party by *certiorari*. Their jurisdiction.

Sec. 12. The district courts shall have power to award injunctions, *certiorari*, writs of *ne exeat* and *habeas corpus*, and any judge thereof in vacation, shall have similar power, and moreover shall not be restrained in granting the same to the districts in which they may be severally allotted, but any judge may in vacation, grant injunctions, writs of *certiorari*, *ne exeat*, or *habeas corpus*, to operate in any district within this commonwealth. May award injunctions, &c.

Sec. 13. The district courts shall have no jurisdiction of *caveats*, *mandamus*, or *certiorari*, unless such *maintain cases*. Jurisdiction restricted in certain cases.

1798. *damus ex certiorari*, shall relate to some record or proceeding in the district, or the land concerning which the *caveat* was instituted shall be within the same.

Further description of jurisdiction. Sec. 14. The district courts to be held as aforesaid, shall have power to hear and determine all treasons, murders, felonies, and other crimes and misdemeanors, committed within their district, that shall be brought before them by any rules or regulations directed by law.

Judges to hold two annual sessions in Frankfort, and when. Sec. 15. The judges of the district courts shall hold two annual general sessions at the state-house in Frankfort, for the trial of all such causes as shall herein afterwards be directed, beginning on the first Monday in February, and third Monday in September in every year, and shall continue to sit ten days, if the business before them require it.

How many may constitute a court at the general meeting. Sec. 16. If all the judges shall not attend, such of them as do attend, may proceed to business : *Provided always*, That not less than three judges shall constitute a court at such general meeting, but one judge may adjourn from day to day, until a sufficient number shall meet to constitute a court, provided that shall be before the sixth day of the said term.

Their jurisdiction. Sec. 17. The said court shall have jurisdiction in all causes, suits and motions against public debtors, sheriffs, clerks of superior and inferior courts, and all collectors of public money, and all public debtors of every denomination whatsoever, for and in behalf of the commonwealth.

Questions new & difficult how to be adjourned. Sec. 18. The district court, when a question new or difficult arises, may adjourn any matter of law to the judges, at their general meeting, where the same shall be heard and determined without delay, and shall be the judgment of that court from which the question of law was adjourned ; but no costs shall accrue on the judgment of a question of law.

Clerks' fees. Sec. 19. The clerks' fees in the district courts and at the general sessions, shall be the same with those of the courts of quarter sessions and county courts, for like services, and for all other services, the same with the clerk of the court of appeals, and shall be collected and accounted for in the same manner and under the same penalties as those of the court of quarter sessions and county courts are.

Sec. 20. The district courts respectively, shall have power and authority to hear and determine all suits removed from the court of appeals, according to the rules and regulations prescribed by law, in the same manner as if the said suits had originated in the said district courts.

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Power over
suits removed
from the court
of appeals.

Sec. 21. If a party in a cause which was depending in the court of appeals, in a case in which the said court had original jurisdiction before the passage of the act entitled "an act to establish district courts in this commonwealth," whether complainant or defendant, shall file a petition with the clerk of the said court, to remove the said cause for trial to the district court in which the land in dispute shall lie, it shall be the duty of the said clerk to remove all the original papers filed in the said suit, to the office of the clerk of such district court, whose duty it shall be to receive the same; and the clerk of the court of appeals shall certify to the clerk of the district court, the situation of the said suit on the rule or trial docket of the court of appeals, and the steps which have been taken in the said court, which shall be a guide to the clerk of the district court, who shall place the said suit on his docket as nearly as may be in the same situation it stood on the docket in the court of appeals; and the clerk of the court of appeals shall receive from the party applying for the papers, the sum of six shillings for his service therein; if any party applying for and receiving papers as aforesaid, from the clerk of the court of appeals, shall fail to deliver the same to the clerk of the district court within twenty days, he shall forfeit and pay the sum of five hundred pounds, to be recovered by action of debt or information in any court of record, by any person who will sue for the same, and shall moreover be liable to the action of the party aggrieved.

How suits may
be removed
from the court
of appeals to
the district
courts.

Sec. 22. Where a petition has been or shall be filed for the removal of any cause from the court of appeals, it shall be lawful for the clerk to deliver the papers in such suit to either party, who shall deliver the same to the clerk of the district court, under the rules, regulations and penalties heretofore prescribed.

Either party
may remove
the papers.

Sec. 23. If a suit removed from the court of appeals to any district court, had been tried in the said court of appeals, or a decree made and a re-hearing granted, such

Proceedings on
re-hearings granted
in the court
of appeals.

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question or questions only, shall be enquired into and determined in the district court, as would have been enquired into and determined in the court of appeals, upon the re-hearing, if the suit had not been removed.

Guards, how
paid where jails
are insufficient.

Sec. 24. If for want of a sufficient jail in any county in which a district court is held, it shall be necessary to impress or hire guards for the safe-keeping of any prisoner in the said jail, the district court, or a judge thereof in vacation, shall have full power and authority to order the jailor to impress or hire such guards, and the said court shall certify to the county court the amount of the allowance to the said guard, which it shall be the duty of the justices of the said county court to order to be paid out of the county levy.

What shall be
deemed a suffi-
cient jail.

Sec. 25. To prevent doubts concerning what shall be taken to be a sufficient jail, *Be it further enacted*, That when the judges of a district court shall receive a county jail as a sufficient jail for the district, and cause the same to be entered on their records, the county thereafter shall be no longer chargeable for the expense of guards.

Guards how
and where paid.

Sec. 26. The expense of guarding prisoners in the district jails, in other cases, shall be paid out of the treasury, for which the auditor shall grant warrants upon a certificate from the district courts.

Allowance to
clerks for im-
plements of of-
fice.

Sec. 27. The judges of the district courts, and the judges at the general meetings, shall have power to make such allowance to their respective clerks as they may think reasonable, for the procuring paper, books, and a press for the use of their offices; and on producing a copy of the order for such allowance to the auditor, it shall be his duty to grant a warrant on the treasurer for the amount.

Allowance for
fuel, &c.

The judges of the district courts at their general meeting, and at their district courts, shall have power to direct the sheriffs attending said courts, to have fires made for their use, when it may be necessary; and their order to the auditor for the expense, shall be settled by him, and paid by the treasurer as aforesaid.

CHAPTER LXV.

1798.


An ACT to reduce into one, the several Acts concerning the Auditor and Treasurer.

Approved February 6, 1798.

Vide Vol. I, Chap. 1, and the Notes.

SECTION 1. *BE it enacted by the General Assembly,* That there shall be an auditor of public accounts, to continue in office during good behaviour. The auditor so appointed shall not be capable of acting, until he shall have taken the oath of fidelity to the commonwealth, and also an oath impartially and honestly to execute the duties of his office. Auditor to take an oath,

Sec. 2. The said auditor is authorised and required to state and keep an exact account of all articles of debit or credit hereafter to arise between this commonwealth and the United States of America, or any of them ; to raise and keep accounts of all officers of civil government, who are entitled to receive, from the public treasury, salaries or wages, fixed by law ; to audit all accounts of wages due to the members of the general assembly for services therein, or for their travelling allowance, such attendance and allowance being previously entered with the clerk of the house of which such member is, in separate books to be kept for that purpose, and to lie during the session of the house, and being certified by the said clerk to be so entered ; and to audit and enter in account, all other demands for money in the treasury, made under authority of any law ; to settle the account of all public debtors, and of all collectors of any revenue or tax, levied by act of general assembly and payable to the treasurer, or of any money due to the public ; to call upon such debtors to render accounts at proper times, and on their failure so to do, to instruct the attorney-general to institute proceedings at law for compelling them to justice, and though it should appear on trial that the defendant oweth no balance to the public, yet his having failed to render an account to the auditor, and to take from him his *quietus*, shall subject him to the payment of all costs incurred by such proceedings to the commonwealth ; to require information on oath from any person, party or privy, of matter relative to any account under his examination, and material for his information ; to require counsel of the attorney-general on all doubts in matters of law, re- To keep accounts with the U. States or any of them, and with officers of this state.
To audit all demands on the treasury.
To call on debtors to the state, and on their failure order proceedings to compel payment.
To require information relative to any account under examination.

1798.  lative to the duties of his office ; to state and keep all the accounts so as to shew the amount of all warrants and certificates given on the treasurer, for what service or article of public expenses they were given, and to lay before the assembly, annually, the said general accounts, together with an account of all balances due to and from the commonwealth, as nearly as he shall be able, and that he shall keep his office at the place where the legislature shall hold their sessions.

To lay before
the assembly a
general ac-
count.

Sec. 3. The auditor of public accounts shall keep a book in which he shall make an entry of every warrant which he shall draw on the treasurer for the payment of money, in order as he shall issue them, in such manner as to shew the date, the name of the person in whose favor it was drawn, and the nature of the claim upon which it was founded ; he shall begin the first day of January, annually, and number each warrant, beginning at number one, and continue progressively until the last day of December following, inclusive ; he shall carry such entry into a book of general accounts, under separate and distinct heads, shewing the total amount of issues for each department ; he shall issue warrants for the quarterly payment of the salaries of every person entitled thereto, as the same shall come due on the last day of March, June, September and December annually, expressing in such warrant that the same is in whole or in part of the first, second, third and fourth quarter salary, for the year in which it became due, as the nature of the case may require ; and where any person shall be appointed to any office, his salary due on the fractional part of the quarter in which he was appointed, shall be settled, and thereafter his salary shall become due as aforesaid ; he shall keep a distinct account against each officer of government entitled to an annual salary ; he shall state the accounts of all public debtors in each county respectively ; he shall report to the general assembly, on the sixth day of each annual stated session, a general statement, shewing the whole amount of every species of taxes which remains due since the establishment of this government, distinguishing the amount of the arrearages for each year, and a statement of the amount of the warrants issued to each department the preceding year.

To keep an ac-
count of each
warrant issued.

All salaries to
be paid quarter-
ly.

Shall report to
the assembly a
general state-
ment annually.

Sec. 4. The auditor shall keep a book for the purpose of receiving and entering lands of non-residents; and all non-residents shall in future enter their lands with the auditor, who shall administer an oath to the person delivering such lists, or by any other means procure the best information in his power, for the purpose of ascertaining the quality of such lands, placing each tract in its proper class, under the name of the county in which it shall be situate, and every non-resident shall enter his lands agreeable to the rules and regulations in case of non-residents. The auditor shall keep a book of transfers, and every non-resident who has entered his lands with the auditor, may, on transferring the same to any other person or persons, have the alteration made with the auditor, and charged to the person or persons to whom transferred, and such person shall be chargeable with the tax of such land or lands thereafter; and each person having such alteration made, shall pay six pence to the auditor, and the money so received shall be accounted for and paid into the treasury by the auditor, on the first day of November in every year, who shall take a receipt for the same.

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Shall keep a book for entering lands of non-residents.

Shall keep a book of transfers.

Sec. 5. And it shall be the duty of the auditor to transmit to the sheriff of the several counties, on or before the first day of July, annually, an account of all taxes that have been paid by non-residents for lands listed with him for his county, and of the lands for which such tax was paid, to enable him with certainty to know what lands he shall be obliged to sell for the payment of taxes.

Shall transmit to each sheriff an account of all taxes received of non-residents.

Sec. 6. The auditor shall keep a book for the purpose of entering the treasurer's receipts of all money paid into the treasury by sheriffs, non-residents, or their agents.

Sec. 7. *And be it further enacted,* That the treasurer for the time being, shall not be capable of executing the said office, until he hath given bond with such security as shall be approved by the governor, with the consent of the senate, in the sum of one hundred thousand pounds, payable to the governor and his successors, in trust for the use of the commonwealth, and conditioned for the faithful accounting for and paying all such sums of money as shall be received by him from time to time by virtue of any act of assembly, to be recovered upon the breach thereof, on motion of the auditor, in any court of record, for public use, provided ten days previous notice be given in writing of such motion; and moreover the

Treasurer how appointed.

Shall give bond.

1798. ^{Shall take oath.} said treasurer, before he enters into his said office, shall take the following oath before the governor, to be administered by the secretary of state: "I, A. B. do swear, that I will faithfully and truly execute the office of treasurer in all things relating to said office, to the best of my skill and judgment, according to law. So help me God."

^{Form of oath.}

^{To receive all monies payable to the state.} Sec. 8. And the said treasurer is hereby authorised, empowered and required, to receive of the several collectors of the public revenue, all taxes arising on lands or other property, and all other public money, payable into the treasury by virtue of any act or acts of assembly.

^{To pay money on the auditor's warrant only.} Sec. 9. And it shall not be lawful for the treasurer to pay or receive any money on account of the public, but on warrant or certificate from the auditor, save only the salary of said auditor.

^{To keep accounts of all money received and paid.} Sec. 10. And the said treasurer shall keep, in a book or books to be provided for that purpose, at the public charge, true, faithful and just accounts of all the money received by him from time to time, on the respective taxes and impositions, by virtue of any act or acts of assembly, and also of all such sum and sums of money as he shall pay out of the treasury, pursuant to such act or acts; which accounts shall be so kept that the nett produce of the several and respective taxes and impositions, and the money paid out of the treasury for every particular service, may appear separate and distinct from each other; and that he lay a statement thereof before the general assembly, on the sixth day of their stated annual session.

^{And lay the same before the assembly.}

^{Committee to be appointed to examine the state of the treasury & auditor's office.} Sec. 11. And there shall be a committee appointed by the general assembly, annually, to examine into the state of the treasury and auditor's office, and the said treasurer is hereby required to lay before the said committee all the accounts and vouchers of the treasury for money received or paid out, for whatever purpose, and produce the money in his hands; and such committee shall make a fair statement of all monies received and paid out of the treasury, and for what purposes, and of the money that shall be in hands, and report the same to the assembly, who shall cause the same to be published; and if the said committee shall discover that any sum or sums of money paid into the treasury upon taxes or imposi-

tions as aforesaid, have been diverted to any use or uses, contrary to the directions of the act or acts of assembly, the said committee shall certify the same to the general assembly. And it shall be the duty of the said committee, in their examination of the auditor's books and papers, to mark, without defacing, all the treasurer's receipts, which may be the foundation of a charge against him, in such of the auditor's accounts as the said committee shall examine, in such manner as shall shew that the said receipts had been examined by the committee.

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Sec. 12. And if the said treasurer divert or misapply any of the money paid into the treasury for public use, contrary to the direction of any act or acts of assembly, by virtue of which the same was raised or appropriated, the said treasurer for such offence shall forfeit his office, and be incapable of holding any office of trust or profit whatsoever, under the state, and moreover shall be liable to pay double the value of any sum or sums so misapplied, to be recovered for the public use, by motion of the auditor, in any court of record, provided ten days previous notice be given in writing of such motion, to the said treasurer so offending.

Penalty on treasurer for misapplying public money.

Sec. 13. *And be it further enacted*, That the treasurer shall arrange his accounts in such order as to shew the amount of all audited warrants by him received, under distinct heads; he shall also state the amount of warrants issued in different years separately; he shall provide, at the public expence, for the use of the treasury, one strong iron chest, one square and one circular punch, one inch diameter; and the auditor and treasurer shall be allowed fuel, presses, blank-books, paper, and other implements necessary for the use of their respective offices, to be paid out of the public treasury, on the governor's approving and certifying their accounts; and the auditor shall issue warrants on the treasurer for payment accordingly.

How treasurer to arrange his accounts.

Sec. 14. *And be it further enacted*, That when any public debtor shall hereafter pay any sum or sums of money in the public treasury, the treasurer on receiving the same shall forthwith make out a receipt for the amount, and carry the same to the auditor, who is hereby authorised and required immediately to give to the treasurer his receipt or *quietus* therefor; and the treasurer shall deli-

How public debtor to obtain a quietus.

1798. ver the said receipt or *quietus* to the person who shall have paid him the sum or sums specified therein.

Treasurer to
render to audi-
tor, an account
weekly, of all
monies by him
paid,
Sec. 15. *And be it further enacted*, That the treasurer shall make out an account of all his payments, and of the warrants on which such payments were made, and shall deliver the same weekly to the auditor; and the auditor shall make out and preserve a list of such payments and warrants, in a book to be by him separately kept for that purpose.

Certificate of
the appoint-
ment of collec-
tor or election
of sheriff, to be
made to the au-
ditor.
Sec. 16. *And be it further enacted*, That the governor on appointing a sheriff agreeably to the constitution, and the officers attending the election of sheriffs in the several counties of this state, and the courts who shall appoint collectors of taxes or clerks, shall immediately after such appointment or election, certify the same to the auditor of public accounts; and every court where any of the above officers shall give security for the due performance of his office, shall in like manner certify the names of such securities, and the amount to which their securityship extends.

County court to
appoint a person
to serve process
on sheriff and
coroner.
Sec. 17. *And be it further enacted*, That where the coroner shall be one of the securities of the sheriff, and it shall become necessary and proper for the auditor to move against the said coroner on account of such securityship, it shall be lawful for the court of the county to which the said coroner and sheriff may belong, and they are hereby required, on application of the auditor in writing, to appoint a fit and proper person to serve any process which may issue on such motion, who shall, before he acts on such appointment, enter into bond with security in double the amount claimed by the auditor, for the faithful execution of his duty, and shall be entitled to the same fees that sheriffs are authorised to receive in similar cases. So much of every act or acts as authorises any person paying money into the public treasury to take the treasurer's receipt therefor, and to deliver the same to the auditor, and thereupon to receive from the auditor a receipt or *quietus*, shall be and the same is hereby repealed. *Provided however*, that nothing herein contained shall be construed to affect those persons holding receipts from the treasurer which may have issued before the passage of this act.

Repealing
clause.

Proviso.

CHAPTER LXVI.

1798.

An ACT to amend and reduce the several Acts of Assembly for the Inspection of Tobacco into one Act.

Approved February 10, 1798.

Vide Vol. I, Chap. 58, and the Notes.

SECTION 1. *BE it enacted by the General Assembly,* That no person shall put on board or receive in any boat or vessel, in order to be exported therein, any tobacco not packed in hogsheads or casks, upon any pretence whatsoever, nor in any hogshead or cask, to be in that or any boat or other vessel exported out of this state, before the same shall have been inspected and reviewed according to the directions of this act; but that all tobacco whatsoever, to be received or taken on board of any boat or other vessel and to be therein exported, or to be carried and put on board any boat or vessel for exportation as aforesaid, shall be received and taken on board at the several ware-houses for that purpose hereinafter mentioned, or some or one of them, and at no other place whatsoever. And if any master or commander of any boat or other vessel, shall take on board or suffer to be taken on board the boat or vessel whereof he is master, any tobacco brought from any other place than some or one of the public ware-houses hereinafter mentioned, any hogshead or cask of tobacco not stamped by some lawful inspector, or shall suffer to be brought on board, any tobacco, except in hogsheads or casks, stamped as aforesaid, every such master or commander shall forfeit and pay fifty pounds for every hogshead or cask of tobacco which shall not have been brought from one of the said public ware-houses, or which shall not be stamped as aforesaid; and moreover, every such hogshead or cask of tobacco shall be forfeited, one moiety thereof to the use of the informer, and the other moiety thereof to the use of the commonwealth.

Tobacco to be
exported but in
casks inspected.

Penalty for
shipping tobacco
contrary to
law.

Sec. 3. If any person, not being a servant or slave, taking upon himself to carry any tobacco to or from any of the said ware-houses in his boat or other vessel, for hire, shall take on board, or permit or suffer to be taken on board, any tobacco whatsoever, in bulk or parcels, such tobacco shall not only be forfeited, and may be seized by any person or persons whatsoever, but the master or skipper offending herein, shall forfeit and pay

Forfeiture for
taking tobacco
on board in bulk
or parcels.

1798. two shillings for every pound weight of such tobacco. And the master or commander of any boat or vessel wherein any tobacco in bulk or parcels shall be found, shall, over and above the forfeiture thereof, be subject and liable to the same penalty, to be recovered, if it doth not exceed five pounds, before any justice of the peace of any county near the place where such boat or other vessel shall lie; and if it exceed five pounds, in any court of record, by action of debt, wherein the plaintiff shall recover his costs. And if any servant or other person employed in navigating any such boat or other vessel, shall connive at or conceal the taking or receiving on board any tobacco in bulk or parcel as aforesaid, he shall pay the sum of five pounds, to be recovered as aforesaid; and if such servant or other person shall be unable to pay the said sum, he or they, and every slave so employed, shall, by order of such justice, receive on his bare back, thirty-nine lashes, well laid on; and if such boat or other vessel be under the care and management of a servant who cannot pay and satisfy the fine so to be inflicted on the master or skipper offending as aforesaid, then such servant, and every other person employed under him, unable to pay the said penalty, who shall be guilty of conniving at or concealing the taking on board tobacco in bulk or parcels as aforesaid, shall, upon every complaint and proof thereof made to a justice of the peace, have and receive, by order of the said justice, thirty-nine lashes, well laid on; and if any servant shall again be entrusted with the care and management of any boat or other vessel, and shall be convicted a second time of taking or receiving on board the same, any tobacco in bulk or parcels, contrary to the directions of this act, the owner of such servant shall forfeit and pay the like sum of two shillings per pound for every pound weight of such tobacco, so taken or received on board in bulk or parcels, and shall also forfeit and pay ten shillings for every day such servant shall thereafter be employed as skipper or master of any boat or vessel to him belonging, to be recovered and applied as aforesaid. *Provided nevertheless*, that it shall be lawful for the proprietor or proprietors to break any hogshead of tobacco after it shall be passed and stamped, and to re-pack and prize the same into small casks for convenience of stowing, provided it be done at the ware-house where the

Further penalties for such offence.

Further penalties.

Powers for sundry purposes.

same was inspected and weighed, marked and stamped; and the inspectors shall particularize all such casks in their manifests, to be given to the masters or skippers of the vessel in which such tobacco shall be laden. *Provided always*, that nothing herein before contained, shall be construed to prohibit any person from carrying or causing to be carried to the said ware-houses, in any boat or other vessel, any tobacco in bulk or parcels, or to prohibit any person to put or take on board any boat or other vessel, any hogsheads or cask of tobacco to be water-borne to the nearest or most convenient ware-house appointed by this act; nor to prohibit the owner of any tobacco to transport his crops, or any part thereof, in hogsheads or casks from one plantation to another, for the better handling and managing thereof, nor any purchaser from bringing the same by water to be re-packed, sorted, stemmed or prized, before the same be carried to the said ware-houses, so as such last mentioned tobacco be packed in hogsheads or casks.

1798.

Sec. 3. *And be it further enacted*, That inspections of tobacco shall be established at the following places, Ware houses appointed thro' the state. viz: In the county of Garrard, on the Kentucky river, opposite the mouth of Hickman's creek, on the lands of James Hogan, to be called and known by the name of Hickman's; in the county of Mercer, on the lands of John Curd, lying at the mouth of Dick's river, to be called and known by the name of Curd's; on the lands of Walter Beall, on the Kentucky river, near Harrod's landing, to be called and known by the name of Harrod's; in the county of Madison, in the town of Boonsborough, to be called and known by the name of Boone's; on the lands of Samuel Biggerstaff, on the Kentucky river, to be called and known by the name of Biggerstaff's; in the county of Fayette, on the lands of James Hogan, at the mouth of Hickman's creek, to be called and known by the name of Hogan's; at Cleveland's and Stafford's landings, to be called and distinguished in the same manner as the said landings are; in the county of Clarke, at Holder's and Bush's landings, to be called and distinguished in the same manner as the said landings are; in the county of Nelson, on the lands of Walter Beall, at the mouth of the Beech fork, to be called and known by the name of Beall's; on the lands of John C. Owings and David Baird, at or near

Hickman's.

Curd's.

Harrod'sburgh.

Boone's.

Biggerstaff's.

Hogan's.

Cleveland's.

Holder's and Bush's

Beall's

1798. the mouth of Stewart's creek, to be called and known
 by the name Stewart's creek ; on the lands of Matthew
 Walton, on the south side of Salt river, at the first yellow
 bank, below the mouth of Long-Lick creek, to be
 called and known by the name of Walton's ; in the
 county of Washington, on the lands of Richard Parker,
 on the Beech fork, at the mouth of Cartwright's creek,
 to be called and known by the name of Parker's ; in the
 county of Woodford, on the lands of Charles Scott, near
 the mouth of Craig's creek, on the Kentucky river, to be
 called and known by the name of Scott's ; in the county
 of Mason, on the lands of John May and Simon Kenton,
 on the lower side of Limestone creek, to be called
 and known by the name of Limestone ; in the county
 of Bourbon, on the lots of Lawrence Sprotzman in the
 town of Paris, to be called and known by the name of
 Bourbon ; in the town of Frankfort, in the county of
 Franklin, to be called and known by the name of Frank-
 fort ; in the county of Jefferson, in the town of Louis-
 ville, near the mouth of Beargrass, to be called and
 known by the name of Louisville ; in the county of Lo-
 gan, on the lands of John Bailey, near the junction of
 the Fair fork and Maulding's fork of Red river, to be
 called and known by the name of Bailey's ; at Bedinger's
 ware-house, near the Blue-Licks in Bourbon, to be
 called and known by the name of Bedinger's ; at the
 mouth of Bracken, in the county of Bracken, to be called
 and known by the name of Bracken ; on the land of
 Samuel Rowntree, one mile below the mouth of Little
 Barren, in the county of Warren, to be called and known
 by the name of Rowntree's ; and on the Ohio river in
 Bullittsburgh bottom, on the land of Cave Johnson, in
 the county of Campbell, to be called and known by the
 name of Bullittsburgh.

Sec. 4. *And be it further enacted,* That the rents of
 the several ware-houses hereby established, shall be and
 they are hereby fixed at three shillings for every hogs-
 head of tobacco that shall be received, inspected and de-
 livered out of such ware-house respectively ; and there
 shall be paid to the proprietors of each ware-house, for
 all tobacco lying therein more than twelve months, at
 the rate of three pence per month for each hogshead, to
 be paid by the shipper thereof, at the time of shipping
 the same : which several rents shall be collected by the

inspectors, and paid to the proprietors from time to time, ^{1798.} in the months of June and November annually, and the inspectors shall be entitled to four shillings and six pence ^{Inspectors' fee.} for each hogshead of tobacco delivered as aforesaid, to be paid in like manner as ware-house rents are, and to be divided between the two acting inspectors as their full fee for inspection, and no inspector shall receive a salary or other fee, except what is allowed by this act.

Sec. 5. Where the ware-houses are already built at any of the said places herein before mentioned and appointed for keeping the same, and are now made use of for public ware-houses, the proprietors and owners of such ware-houses, shall be and they are hereby obliged to let the same to the inspectors during the continuance of this act, at the rent hereby established for such ware-houses respectively; and if any proprietor or owner shall refuse so to do, he shall forfeit and pay five hundred dollars. ^{Proprietors of old ware-houses to let them to inspectors.} Every inspector of tobacco, except the inspectors at the Louisville inspection, who now is or hereafter shall be appointed, shall continue in office for three years succeeding such appointment, and from thence until a successor shall be appointed and qualified, if he shall so long behave himself well, but the inspectors at Louisville shall remain in office for the term fixed by a special act. ^{Penalty for refusal.} ^{For what time inspector to continue in office.} ^{Exception as to inspector at Louisville.}

Sec. 6. *And be it further enacted,* That the inspectors at the several ware-houses, shall, at the court to be held for their respective counties, in the month of September yearly, or at the next succeeding court, produce and render into court an exact account under their hands, of the number of hogsheads of tobacco inspected at their respective ware-houses the preceding year, and of the condition of the ware-houses under their charge, and the quantity of tobacco they are capable of containing; and thereupon such court, if they shall not be satisfied that the ware-houses already built at any of the said inspections are properly secured, and contain sufficient room for two-thirds of the number of hogsheads mentioned in such account, to be conveniently stowed, shall enter an order that the owner or proprietor of such ware-houses, shall, within such reasonable time as the said court shall think fit to allow, repair and make close the ware-houses already built, and secure the same with strong doors hung on iron hinges, and with strong locks ^{Inspectors to lay yearly before the court on account of tobacco inspected, and condition of the houses.} ^{Court may order the proprietor to repair the houses, &c.}

1798. or bolts, and that such owner or proprietor shall also, before the first day of November in the ensuing year, erect, build, and completely finish such and so many other strong, close and substantial houses, as with the other houses already built, shall be sufficient in the opinion of such court, conveniently to contain two-thirds of the quantity of tobacco mentioned in such inspector's account, and secure the same in the manner herein before directed ; a copy of which order shall be served on such owner or proprietor, or his or her guardian, husband, attorney or agent (as the case may be ;) and if such owner or proprietor, his or her guardian, husband, attorney or agent, shall fail to appear at the next succeeding court after such notice, and enter into bond with sufficient security in a reasonable penalty, payable to the governor for the time being and his successors, with a condition for the due performance of the same, the said inspection shall be discontinued.

Sec. 7. *And be it further enacted*, That if any county court shall fail or refuse to do their duty in directing such houses, funnels and wharves and other necessary conveniencies at the places established by this act for erecting new ware-houses, or such additional buildings and repairs at the places where houses are already built, and causing the same to be built or made according to the directions of this act, every justice so failing or refusing, shall forfeit and pay thirty dollars, to be recovered in any court of record, with costs, by action of debt or information : *Provided always*, That nothing herein contained shall be construed to give power to the said justices to take away the houses, orchards, or other immediate conveniencies of any proprietors of lands, for the purposes aforesaid, nor to the said inspectors to keep any horses, cattle or hogs at any public ware-houses, except their riding horses, upon the land appropriated for such ware-houses ; and if any swine belonging to the said inspectors, or any of them, shall be found at large upon the land appropriated for such ware-houses, or the lands adjoining thereto, it shall be lawful for the proprietors of the said lands to kill, or cause to be killed or destroyed, all such swine.

Sec. 8. *And be it further enacted*, That on complaint being made by the owner or owners of any of the ware-houses aforesaid, to any justice of the peace in the county

And build new ones.

Copy of the order to be served on the proprietor. If he fails to appear, &c.

Inspection to be discontinued.

Penalty on justices for neglect.

Orchards and other conveniencies not to be taken from proprietors.

Inspectors not to keep horses, swine, &c. on the land.

Waste or destruction of ware houses how to be punished.

where such ware-house shall lie, against any person or persons, for breaking, tearing or committing any waste or destruction of or in such ware-house or ware-houses, it shall be lawful for such justice, and he is hereby empowered and required, to give judgment and award execution against the body or estate of such offender, if found guilty, for all damages occasioned by such breaking, tearing, or waste or destruction, provided such damage do not exceed the sum of five pounds, in his opinion; and if such damages shall exceed that sum, then it shall be lawful for such owner or owners to commence and prosecute his or their action at law against any such offender, in any court of record within this state, in which the plaintiff shall recover costs, although the damage shall be under five pounds.

1798.

Sec. 9. *And be it further enacted*, That there shall be kept at every one of the said ware-houses herein before appointed, and all others hereafter to be appointed, a good and sufficient pair of scales, with weights to weigh fifteen hundred pounds at the least, and a set of small weights, the same that are or ought to be provided for the standard weights of each county; and moreover the said justices are hereby required and directed once in every year at least, to appoint one or more of their number to view the said scales, and examine and try the weights at the several ware-houses by the standard weights of the county; and if the said scales and weights shall want repairing, or the weights be found deficient, or different from the lawful standard, the said justices shall cause the same to be repaired or mended, and the weights made conformable to the standard; and if the justice or justices so appointed shall refuse or neglect to do the same, the justice or justices so refusing shall forfeit and pay the sum of fifty dollars; and the charge of repairing and amending the said scales and weights, and also for removing the standard to the several ware-houses for trying the same, shall be paid by the inspectors respectively, and be again allowed to them in their accounts with the proprietor or proprietors of such ware-house.

Scales and weights to be provided.

And tried and repaired once a year.

Sec. 10. *And be it further enacted*, That all tobacco which shall be brought to any of the public ware-houses, shall be viewed, inspected and examined by two persons to be thereunto appointed, who shall be called inspec-

Number of inspectors to be appointed.

1798. Additional in-
spector, his du-
ty.
- And pay:
- Penalty on in-
spector taking
reward or fee
to resign his of-
fice.
- And on any
person giving
such fee or re-
ward.
- Every inspector
to give bond &
security.
- And take oath.
- Form thereof.
- tors ; the governor shall appoint one person to be addi-
tional inspector at each ware-house, which additional in-
spector shall officiate as such only in cases of disagree-
ment in opinion of the other inspectors as to the quality
of tobacco brought to their inspection, or where either of
them shall through sickness or otherwise be absent from
his duty, or shall bring his own tobacco to the ware-
house whereof he is inspector to be viewed, and the said
additional inspector shall be paid for the services he
shall perform, by occasion of the absence of either of the
other inspectors, out of the fees of such absentee in pro-
portion to the time he shall officiate.
- Sec. 11. *And be it further enacted*, That if any inspec-
tor shall hereafter accept, receive or take, directly or in-
directly, any fee, gratuity, service or reward whatsoever,
of any person for resigning or giving up his office of in-
spector, he shall not only be for ever disabled from
holding the like office, but for such offence shall forfeit
and pay the sum of two hundred pounds, to be recover-
ed with costs, by action of debt in any court of record
within this state, by any person suing for the same ; and
every person offering or paying, directly or indirectly,
any fee, service, gratuity or reward whatsoever, to any
inspector to resign his said office, shall for the said of-
fence be for ever disabled from holding the office of in-
spector within this state.
- Sec. 12. *And be it further enacted*, That every person
appointed or to be appointed inspector by virtue of this
act, shall, before he enters upon the execution of the
said office, enter into bond with good security, in the pe-
nalty of one hundred pounds, payable to the governor
for the time being and his successors, with condition for
the true and faithful performance of his duty according
to the directions of this act ; which bond shall be recor-
ded in the county court, on which suit may be brought
by any person injured, for damages. And every such
inspector shall also take the following oath at the time he
gives bond, that is to say, " You shall swear that you will
diligently and carefully view and examine all tobacco
brought to the public ware-house or ware-houses where
you are appointed inspector, and that not separately and
apart from your fellow, but in his presence, and that you
will not receive or pass any tobacco that is not, in your
judgment, sound, well conditioned, merchantable and

clear from trash, nor receive, pass or stamp any tobacco hogshead, or cask of tobacco, contrary to the act entitled "an act to amend and reduce the several acts of assembly for the inspection of tobacco into one act," nor refuse any tobacco that, in your judgment, is sound, well conditioned, merchantable and clear of trash; and that you will not change, alter or give out any tobacco, other than such hogsheads or casks for which the receipt to be taken was given, but that you will in all things well and faithfully discharge your duty in the office of an inspector, according to the best of your skill and judgment, and according to the directions of this act, without fear, favor, affection, malice or partiality. So help you God." Which oath shall be taken before the court of the county wherein such inspector shall reside, or the ware-houses at which he shall be inspector, shall stand; and if any person shall presume to execute the office of inspector before he shall have given such bond and taken such oath as aforesaid, he shall forfeit and pay one hundred dollars. 1798.

Sec. 13. *And be it further enacted,* That all inspectors to be appointed by virtue of this act, shall constantly attend their duty at the ware-house or ware-houses under their charge, from the first day of November to the first day of June yearly, except Sundays, and the holydays observed at Christmas, Easter and Whitsuntide, or when hindered by sickness; and afterwards they, or one of them, shall attend, when necessary, at the same, except Sundays, to deliver out tobacco for exportation, until all the tobacco remaining there * [the said first day of June, shall be delivered; but no inspector shall be obliged to view any tobacco between] the said first day of June and the said first day of November, except such as remained in the ware-house on the said first day of June; and every inspector neglecting to attend as aforesaid, shall forfeit and pay to the party injured, one dollar for every neglect, or shall be liable to an action on the case of the party grieved, to recover all such damages as he or they shall have sustained by occasion of any such neglect, together with his or their full costs, at the election of such party. And that all persons having tobacco at the public ware-houses may have equal justice, the inspectors shall enter in a book to be kept for that purpose, the marks and owners' names of

Time inspectors are to attend.

* The words included thus [] are not in the roll.

Penalty for not attending.

Tobacco to be entered in a book as brought in.

1798. all tobacco brought to their respective ware-houses for inspection, as the same shall be brought in, and shall view and inspect the same in due turn, as it shall be entered in such book, without favor or partiality, and shall uncase and break every hogshead or cask of tobacco brought them to be inspected as aforesaid ; and if they shall agree that the same is good, sound, well conditioned, merchantable, and clear of trash, then such tobacco shall be weighed in scales, with weights of the lawful standard, and the hogshead or cask shall be stamped in the presence of the said inspectors, or one of them, with the name of the ware-house at which inspected, and also the tare of the hogshead or cask, and quantity of nett tobacco therein contained ; and the inspectors at such ware-houses shall issue a receipt for each hogshead of tobacco they shall pass, if required by the owner ; which receipt shall be in the form following, to wit :

River.			} Received of hogsheads of crop tobacco, marks, numbers, weights & species as per margin, to be delivered by us to the said or b order for ex- portation when deman- ded.
Ware-house, the	day of	179 ,	
Sweet scented,		Oronocko.	
leaf.	Stemmed,	leaf.	
marks. No.	grofs. tare, nett.	grofs. tare. nett.	

Witness our hands, L. S. L. S.

Receipts to be printed. And no inspector or inspectors shall, under any pretence whatsoever, issue a receipt for any tobacco, other than such as shall be printed, in which the date shall be inserted at full length ; and if any inspector or inspectors shall presume to issue a receipt in any other manner than is hereby expressed, he or they, for every such offence, shall forfeit and pay the sum of one hundred dollars, to be recovered with costs by any person who may sue for the same in any court of record within this state ; which receipts as aforesaid, shall be furnished by the public printer and at the public expence. But if the said two inspectors shall at any time disagree concerning the quality of any tobacco brought for their inspection to any ware-house under their charge, they shall as soon as conveniently may be, call in the additional inspector appointed to attend such ware-house, who shall determine and pass or reject such tobacco ; and if he shall pass the same, his name shall be entered in a book kept

Penalty.
Provision in case the inspectors disagree.

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by the inspectors, opposite the mark, number and weight of the hogshead by him passed, together with the name of the inspector at such ware-house who shall officiate with him; and the inspectors at each of the ware-houses established by this act, shall constantly keep so many able hands at their respective ware-houses, not exceeding two, as the courts of the several counties wherein they lie, shall from time to time judge necessary and direct, for the purpose of taking care of all tobacco brought to such ware-house, and stowing it away after the same be inspected and stamped; and no inspector shall by himself, his servant or any other person, either directly or indirectly, be concerned in picking any refused tobacco, unless it be his own property, on any pretence whatsoever, under the penalty of being forever thereafter disabled from holding the office of inspector.

1798.

What hands the inspectors shall keep.

Inspectors or servants not to be concerned in picking tobacco.

Sec. 14. When any tobacco shall be refused by the inspectors, the proprietors thereof shall be at liberty to separate the good from the bad, but if he refuses or neglects so to do within one month of such refusal, the inspectors shall employ one of the pickers attending the ware-house, to pick and separate such refused tobacco, and give the owner credit for so much thereof as shall be found merchantable, after paying the pickers one fifteenth part of the quantity saved; and the inspectors shall cause the tobacco which shall by them be judged unfit to pass, to be burnt in the funnel erected or to be erected at such ware-house, under the penalty of ten dollars for every failure, to the informer, recoverable with costs before any justice of the county wherein such ware-house shall lie.

Refused tobacco may be picked.

Sec. 15. And whereas it has been found that many persons attending the ware-houses under the denomination of pickers, have been guilty of great frauds, impositions and abuses therein; for remedy whereof, *Be it enacted*, that the courts of the several counties wherein any of the public ware-houses appointed by this act are established, shall and they are hereby required to nominate and appoint, from time to time, such and so many persons as to them shall seem necessary, who are willing to undertake the same, to attend the several ware-houses within this state, to turn up, sort, separate and pick such tobacco as shall be refused by the inspectors; and every person so appointed a picker, shall make oath before the

Pickers how to be appointed.

Their oath.

1798. court at the time of his appointment, or at some succeeding court, that he will diligently and carefully, without fraud or embezzlement, sort and separate all such tobacco as shall be refused by the inspectors, and as the owner or proprietor thereof, or the inspectors, shall employ him to pick ; and every picker of tobacco shall be allowed to demand and receive from the respective proprietors, one shilling per hogshead for opening, and one fifteenth part of all the tobacco saved out of any refused hogshead by him picked, for his services in opening, sorting and picking the same, and no more. And no picker of tobacco shall keep or employ any negro or mulatto slave at any public ware-house, on any pretence whatever ; nor shall any picker presume to hinder any person who may choose to open their own tobacco, or to pick what may be refused by the inspectors, from the free use of the picking-house and prize, for the convenience of picking and prizing the same. And if any picker shall misbehave himself in his said office, it shall and may be lawful for the court of the county where such picker shall be appointed, on complaint and motion to them made, to remove such picker from his said office, and to appoint another person to act in his room, if to them it shall seem necessary, and every picker so removed, shall for ever hereafter be rendered incapable of serving as picker at any public ware-house ; provided such picker hath ten days previous notice of such motion : and any person who shall be aggrieved by any such misbehaviour in a picker, may make complaint thereof to any justice of the peace, who is hereby directed and empowered to take depositions therein, provided such picker have notice thereof, and to transmit the same to the next court to be held for the county where the offence shall be committed, to be there given in evidence on the examination into such misbehaviour. And if any person not being appointed and sworn as aforesaid, shall presume to undertake the opening, sorting, picking or separating any such tobacco for hire or reward, every person so offending shall forfeit and pay twenty shillings for every such offence, to be recovered by the informer, to his own use, before any justice of the peace. *Provided*, that any proprietor of tobacco who may choose to open, pick and prize his own tobacco, may employ his own servants or slaves ; and the inspectors shall issue
- Their allowance.
- Not to employ negroes or mulatto slaves.
- Punishment for misbehaviour.
- Penalty for picking without being appointed.
- Except by the proprietor and his servants, &c

receipts for all tobacco saved by picking, to the proprietors only of such tobacco, and not to the pickers of the same. And the inspectors shall not suffer any picker to prize up any tobacco that he shall have saved by picking, for his own use. And if any tobacco packed in any hogshead or cask by any overseer, or the hands under his care, shall be burnt by the inspectors by reason of its being bad, unsound or not in good condition, the overseer who had the care of making and packing the same, shall be at the loss of the tobacco so burnt, and make satisfaction for the same out of his share of the crop, or otherwise; and the inspectors shall be obliged to keep an account of all tobacco so burnt.

1798.

Overseer liable
for tobacco re-
fused & burnt.

Sec. 16. If any inspector of tobacco shall in any manner be concerned as a partner with, or receive from any picker of tobacco, money, or any gratuity, every inspector herein offending, on conviction before any court of record, shall forfeit and pay fifty dollars to the prosecutor, to be recovered by action of debt, with costs, and shall moreover be rendered incapable of serving as an inspector. Every picker who shall be concerned as above with any inspector, or who shall demand, take or receive any greater fee or reward for his services, other than by law allowed, shall forfeit and pay, on conviction, to the person prosecuting, the sum of one hundred dollars, to be recovered in like manner, and shall for ever after be incapable of acting in character of picker at a public warehouse.

Regulations to
prevent frau-
dulent combi-
nation between
pickers and in-
spectors.

Penalty.

Sec. 17. Where any tobacco shall be brought to any of the said ware-houses for the discharge of any public or private debt or contract, the said inspectors, or one of them, after they have viewed, examined and weighed the said tobacco, according to the directions of this act, shall be obliged to deliver to the person bringing the same, as many receipts under the hands of the said inspectors as shall be required, for the full quantity of tobacco received by them, in which shall be expressed whether the tobacco so received be sweet scented or Oronocko, stemmed or leaf; which receipt shall be in the form following, to wit: " River, number
ware-house the day of 179 . Re-
ceived of pounds of transfer tobacco, to be de-
livered on demand, to him or to his order, according to
the directions of the act entitled 'an act to amend and

Form of trans-
fer receipts.

1798.	reduce the several acts of assembly for the inspection of tobacco into one act, witness our hands ;” and shall bear date the day the tobacco for which the same is given shall be received and passed, and shall be current in all tobacco payments, according to the species expressed in the receipt, and shall be transferable one to another in all such payments, and shall be paid and satisfied by the inspector or inspectors who signed the same, upon demand. And for every hogshead of tobacco brought to any public ware-house and transferred, there shall be an allowance by the inspectors thereof to the person bringing the same, after the rate of four pounds of tobacco for every hundred pounds of tobacco the said hogshead shall contain, for the cask, so as such allowance do not exceed thirty pounds of tobacco, provided the cask or hogshead is good, and of such dimensions as is hereinafter expressed ; and the said inspectors shall and they are hereby obliged to make every hogshead paid away by them in discharge of any receipt by them given as aforesaid, to contain one thousand pounds of nett tobacco at the least ; and for every hogshead of tobacco by them paid away, well nailed and lined fit for shipping, there shall be paid by the person shipping such hogshead, nine shillings and six pence, for inspection and ware-house rent, and three shillings for prizing and nails ; which said sum of three shillings the inspectors may retain in their hands for their own use, to reimburse them the expense and trouble of providing nails and prizing. And the person demanding or receiving tobacco in discharge of receipts as aforesaid, shall allow to the inspectors thirty pounds of tobacco for each hogshead so received, for the cask, and two pounds of tobacco for every hundred pounds of tobacco contained in such receipts, and so in proportion for a greater or lesser quantity, for shrinkage and wasting, if the said tobacco be paid within two months after the date of the receipt given for the same, and one pound of tobacco for every hundred, for every month the same shall be unpaid after the said allowance, so as such allowance for shrinkage and wasting do not exceed, in the whole, six pounds of tobacco for every hundred ; and if any inspector or inspectors by whom any such receipts for tobacco as aforesaid shall be signed, shall refuse or delay to pay and satisfy the same when demanded, every inspector so refusing or delaying shall
Their date and currency.	
Allowance for cask.	
Weight of tobacco prized in discharge of notes.	
Shipper to pay 9/6 for inspection and rent, and 3 shillings for prizing and nails.	
Allowance for cask & shrinkage.	
Remedy against inspectors.	

forfeit and pay to the party injured, double the tobacco so refused or delayed to be paid, to be recovered, with costs, before any court of record within this state, if the receipt or receipts so refused or delayed to be paid exceed five hundred pounds of tobacco; and if the said receipt or receipts do not exceed five hundred pounds of tobacco, the double value aforesaid shall and may be recovered before any justice of the peace of the county wherein the ware-house shall be, at which the receipt or receipts ought to be paid.

1798.

Sec. 18. *And be it further enacted*, That all tobacco brought to any of the said ware-houses in hogsheads, to be exported on account and for the use of the owner thereof, after the same shall have been received, examined, found to be good and weighed, shall be stamped as herein before directed, and the said inspectors, or one of them, shall deliver to the person bringing the same, as many receipts signed as aforesaid, as shall be required for the number of hogsheads so brought and stamped, in which shall be expressed, whether the tobacco so received be sweet scented or Oronocko, stemmed or leaf, and whether the same be tied up in bundles or not; and where any hogshhead hath any part leaf and part stemmed, shall signify the same at the bottom of the receipt; and they shall not mix stemmed and leaf tobacco in any hogshhead which they shall prize and pay away in discharge of their transfer receipts; and for every hogshhead brought to any of the said ware-houses to be exported by land or by water out of this state, there shall be paid to the inspectors attending such ware-houses, by the exporter, at the time of demanding the same for exportation, the sum of 7/6.

How receipts
are to be given
for crop tobac-
co.

seven shillings and six pence; and the owners of the tobacco shall find and provide nails sufficient for securing and nailing thereof, and where they shall fail so to do, the inspectors at such ware-house shall furnish nails for the purpose aforesaid, and shall be allowed and paid by the owner, eight pence for each hogshhead so secured; and if any inspector or inspectors, shall alter, change or deliver out any hogshhead of tobacco other than the hogshhead for which the receipt for crop tobacco to be taken in, was by him or them given, or shall alter, or change any such tobacco, although no such receipt shall have been given, such inspector or inspectors shall forfeit and pay fifty pounds for every hogshhead so altered, changed,

Exporter to pay

Penalty on in-
spectors chan-
ging tobacco.

1798. or delivered out. And if any inspector shall fail or re-
 fuse to deliver any hogshead of tobacco when the same
 shall be demanded for exportation, such inspector shall
 forfeit and pay to the owner thereof, double the value of
 the tobacco which they shall so refuse or fail to deliver.
 And all inspectors shall, and they are hereby obliged, if
 required, to take in any receipt or receipts given by them
 for crop tobacco, and after having weighed such tobacco
 to give transfer receipts for the same, with an allowance
 of four per centum for the cask, so as such allowance do
 not exceed thirty pounds of tobacco for every cask :
Provided, That such hogshead shall contain at least one
 thousand pounds of nett tobacco, and not mixed leaf and
 stemmed : *Provided nevertheless*, That no inspectors
 shall give their receipt or receipts for any transfer or
 crop tobacco, which shall be opened or picked by any
 picker legally appointed, until the proprietor of such to-
 bacco, or his or her agent, shall have first paid or tender-
 ed to such picker, his lawful charges for opening or pick-
 ing the same. And in the absence of any such picker, a
 payment or tender to any of the inspectors there atten-
 ding, for the use of the picker, shall be as effectual as if
 made to such picker in person. And if any inspectors
 shall deliver their receipt or receipts for any such tobac-
 co so opened or picked, before such payment or tender
 be made, they shall be liable to such picker for the a-
 mount of the same.

Regulations for packing tobacco. Sec. 19. And for restraining the undue practice of
 mixing trash with stemmed tobacco, and preventing the
 packing of tobacco in unsizable casks, *Be it enacted*,
 that all stemmed tobacco not laid strait, whether the
 same be packed loose or in bundles, shall be accounted
 unlawful tobacco ; and that no tobacco packed in hogs-
 heads which exceed forty-eight inches in the length of
 a stave, or thirty inches at the head, within the crow,
 making reasonable allowances for prizing, which allow-
 ance shall not exceed two inches above the guage, in the
 prizing head, shall be passed or received. But the ow-
 ner of such tobacco packed in casks of greater dimensions
 than before expressed, shall be obliged to re-pack the
 same in sizeable casks, at his own charge, before the
 same shall be received or stamped by the inspectors.

Penalty for delivering tobacco without ances. Sec. 20. And whereas many and great inconveni-
 ences have arisen from inspectors undertaking to deliver

tobacco, the property of others, in their ware-houses, without order from the proprietor of the same; *Be it enacted*, That from and after the passing of this act, if any inspector shall presume to deliver any tobacco in his ware-house, without order from the owner or proprietor of such tobacco, every inspector so offending, and being thereof duly convicted in the court of the county wherein he officiates, is declared incapable of serving for ever after as an inspector in this state, and moreover shall be liable to the penalty of fifty pounds for every hogshead of tobacco so as aforesaid delivered without order of the owner or proprietor thereof, to be recovered by such owner or proprietor thereof, if he or she shall prosecute within four months after the offence committed; or if he or she decline the prosecution, then after that time by any person who shall inform or sue for the same, by action of debt or information, in any court of record within this commonwealth. And if any inspector shall deliver any transfer receipts or notes of credit, for tobacco, to any person or persons whatsoever, unless at the time of delivering the same he shall have actually and *bona fide* received and passed tobacco the property of him, her or them in whose name or names such receipts or notes shall be made out, to the full amount of the quantity therein specified, every inspector so offending, and being duly convicted, shall be disabled from serving as an inspector, and moreover shall forfeit five pounds for every hundred weight of tobacco such fictitious note shall express, to any person who shall sue for the same, recoverable by action of debt, in any court of record; and for every prosecution against any inspector or inspectors, for the said offence, the proof of his or their innocence shall lie upon the defendant.

Sec! 21. The owner of any transfer receipts may at any time before the sale of the tobacco contained in such transfer receipts, as hereinafter is directed, receive and mark hogsheads of tobacco to satisfy such receipts; and the inspectors shall take in their former receipts, and deliver crop receipts for such hogsheads, and shall be answerable for the safe-keeping thereof, in the same manner as they are for crop tobacco; but the persons receiving such hogshead, shall pay to the inspectors nine shillings for the inspection and nails, for every hogshead, that is to say, three shillings down, to the inspectors for


1798.

order from the proprietors.

And for issuing fictitious transfer receipts.

Inspectors to give crop notes in exchange for transfer.

9s. to be paid for inspection, rent, prizing, &c.

1798.  their use, for nails and trouble in prizing, and six shillings for inspection fee and ware-house rent, when the tobacco is delivered. And the inspectors shall, at the court held for their county in the month of September, annually, or if there be no court in that month, then at the next court held for their county, lay before the court an account, upon oath, of all transfer receipts that were not by them taken in and received before the time of sale, herein before mentioned ; and after such account exhibited, and oath made, shall sell the tobacco in such receipts contained, deducting the allowance for shrinkage and wasting, at public auction, at the door of the court-house, between the hours of twelve and two ; and the inspectors shall pay the money arising by such sale, in satisfaction of their receipts, from time to time, to the proprietors thereof, making their demand, under the same penalty as is inflicted for not paying inspectors' receipts.

Inspectors to account yearly with the county court.

And sell transfer tobacco for outstanding notes.

And pay the money to the proprietor.

Sec. 22. And if any justice of the peace shall know, or be informed upon oath, of any tobacco pressed or packed, in order to be shipped off or carried out of this state by water, without being inspected, such justice by himself, or any sheriff or constable, by warrant from such justice, within the limits of his county, shall have power and authority and is hereby required to enter any suspected houses, and break open all doors, in the day time, the keys of such doors having been first demanded, and refused to be delivered, to search for the same ; and if any tobacco shall be found by such justice, sheriff or constable, pressed in any hogshead, cask, barrel or other package whatsoever, such justice, sheriff or constable, shall seize the same ; and the person in whose possession such tobacco shall be found, shall forfeit to the informer five pounds, for every hundred weight, and so in proportion for a less quantity, to be recovered, with costs, in any court of record, if it be five pounds or upwards ; and any justice of the peace of any county near the place where any boat or other vessel shall ride, upon information made to him upon oath, by any free man, that there is good cause to suspect any tobacco uninspected in cask, bulk or parcels, to be on board such ship or other vessel, shall, and he is hereby empowered and required to issue his warrant, directed to the sheriff, or any constable of his county ; and the sheriff, or any constable of his county, shall have full power and

Proceedings to prevent the exportation of uninspected tobacco.

authority, and he is hereby required to enter and go on board such boat or other vessel to search for and seize such tobacco; and the same being seized, shall be brought on shore and carried before the same or any other justice, who shall cause the said tobacco to be carried to the nearest ware-house, and there inspected, and, if passed, restored to the owner, in case he shall be innocent of the fraud; but if he shall appear to have been concerned in such fraud, or if no owner shall claim within three months, the said tobacco shall be sold by the inspectors, and the money arising from such sale to be paid into the public treasury, and accounted for to the general assembly. And the commander or skipper of any boat or other vessel on board which such tobacco is found, shall forfeit to the informer five pounds for every hundred weight, and so in proportion for a less quantity, to be recovered, with costs, in any court of record, if it be five pounds, or more. And if any master or skipper of any boat or other vessel, or any other person whatsoever, shall resist the officer in the execution of any such warrant, every such master or skipper shall forfeit and pay two hundred pounds, and every sailor or other person so resisting, shall forfeit and pay twenty-five pounds. And if any action shall be brought against any justice of the peace, sheriff or constable, for doing any thing in execution of this act, the defendant may plead the general issue, and give this act in evidence; and if the plaintiff shall be nonsuited, or a verdict pass against him, or a judgment on demurrer, the defendant shall recover double costs.

Sec. 23. *And be it further enacted*, That where any tobacco hath remained or shall hereafter remain undermanned, in a public warehouse * [two years after the same hath been or shall be inspected, the inspectors at such warehouse] shall advertise in the Kentucky Herald or Gazette, for three weeks successively, a list of the marks, numbers and weights of such tobacco, with the names of the persons for whom it was inspected; and if no owner appears to claim the same in three months, they shall, at the next court to be held for the county in which such ware-house shall be, after the expiration thereof and advertising as aforesaid, deliver to the court the like list, which court is hereby empowered and required to order the same to be publicly sold at the

1793.

Penalty on masters of boats, &c. resisting the execution of the justices' warrant.

* The words included thus [] are not in the roll.

Old tobacco to be sold and regulations respecting the sale thereof.

1798.

Method of detecting and punishing inspectors failing in their duty.

court-house door, on a court day, to the highest bidder; and the money arising from the sale thereof, shall be paid by the inspectors to the treasurer of this state for the time being, who shall account for the same, from time to time, to the general assembly. And if any person having a right to any tobacco so sold, shall prove his property therein, the treasurer shall re-pay to such person the money for which such tobacco was sold. Any two justices shall have power to visit all or any of the public ware-houses within their county, and if they shall discover any negligence in the inspectors, either in securing the tobacco, or stowing the same away in a proper manner, or that they are guilty of any other breach or breaches of their duty, the justices shall certify to the county court thereof. And if any inspector shall be adjudged guilty of a breach of his duty, he shall be removed from his office, and shall be forever after incapable of serving as an inspector; and if any inspector shall be removed from his office, upon a complaint and prosecution against him in the method by this act prescribed, he shall be liable to the action on the case, of the prosecutor for his necessary costs and expenses in such prosecution, in which the prosecutor shall recover his full costs of suit; but if the inspector or inspectors shall be acquitted upon such examination, the prosecutor shall be liable to the action of such inspector or inspectors, for the recovery of all damages and expenses which he or they shall have sustained or been put to by such prosecution, and costs, unless the county court shall certify that there was reasonable cause for such complaint; and every inspector shall moreover be liable to the action of the party grieved, for all loss and damage that may happen or arise to any person by occasion of any failure of duty or neglect of any such inspector, in which action the plaintiff shall recover his full costs, although the damages do not exceed forty shillings.

Ware-houses burnt, the public to make good the loss to the parties injured.

Sec. 24. *And be it further enacted*, That if any of the ware-houses herein before mentioned shall happen to be burnt, the loss sustained thereby shall be made good and repaired to the several persons injured, by the general assembly; and in case of such accident, no inspector shall be sued or molested by reason of any receipts by them given, or for any tobacco burnt in any of the said ware-houses, but shall be acquitted and discharged of and

VI. YEAR OF THE COMMONWEALTH.

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from the payment of the tobacco in such receipts mentioned, any thing herein before contained to the contrary notwithstanding: *Provided always*, that if the receipts for tobacco so burnt and destroyed, shall be of an older date than twelve months, the tobacco shall not be paid for by the public, but the owner or proprietor thereof shall bear the loss. 1798.

Exception.

Sec. 25. *And be it further enacted*, That the inspectors shall not permit the proprietor, or any other person, to make use of the ware-house at which they are inspectors. And if any ware-house shall hereafter happen to be burnt, and it shall appear that such ware-house was burnt by means of the inspectors permitting the proprietor, or any other person to make use thereof, such inspector shall re-pay to the treasurer for the time being, all such sum or sums of money as shall have been paid to the person or persons so injured. Warehouses not to be used for private purposes.

Sec. 26. *And be it further enacted*, That if any person hereafter shall make any fire within any public ware-house, or without doors, within one hundred yards of such ware-house, other than in the inspectors' counting room, squares or funnels, such person, if a free man, shall, for every such offence, forfeit and pay ten pounds, to be recovered with costs by action of debt or information in any court of record within this state, by the informer, to his own use; and if a servant or slave, he or she shall, by order of any justice of the peace, receive on his or her bare back, twenty lashes for every such offence; and it shall not be lawful for any person whatsoever to erect or build, or cause to be erected or built, any wooden chimney or chimnies within two hundred yards of any public ware-house; and where any such are already built, within the distance aforesaid of any public ware-house, the owner or proprietor thereof shall pull down the same, or on refusal or neglect so to do in one month after the passing of this act, it shall be lawful for the sheriff of the county, and he is hereby required to cause such chimney or chimnies to be pulled down and demolished. No fire to be kindled in or near a Ware-house.

Nor wooden chimnies built near it.

And to the intent that the just quantity of tobacco exported may be more exactly known,

Sec. 27. *Be it enacted*, That all inspectors shall carefully enter in a book to be provided and kept for that purpose, the marks, numbers, gross, nett weight and tare Inspectors to keep accounts and deliver manifests with tobacco shipped.

1798.



Regulations
when tobacco
is re-landed, or
put on board o-
ther boats.

Fee for re-land-
ing tobacco.

Method to be
pursued when
inspector's re-
ceipts are lost.

of all tobacco viewed and stamped by them as aforesaid, and in what vessel the same shall be laden or put on board, and shall also with every boat load of tobacco, send a list of the marks, numbers, gross, nett weight and tare of every hogshead or cask of tobacco then delivered, to be given to the master of the vessel in which the same shall be put on board; and if the tobacco be delivered to the same boat is intended to be put on board several vessels, then they shall deliver so many distinct lists as aforesaid of the hogsheads or casks to be put on board such vessels respectively; but whereas it may happen that the boat in which tobacco was intended to be put, may be so full as not to be able to stow all the tobacco contained in such list, in such case it shall be lawful to ship the said tobacco, or any part thereof, on board of any other vessel, where the owner thereof shall think fit, the masters of such vessels endorsing on said lists the marks and numbers of the respective hogsheads by them taken on board, and giving notice thereof to the inspectors of the ware-house from which the same was brought; or if there be no vessel to receive the said tobacco, then it shall be lawful for the master of the first mentioned vessel, to put the said tobacco into any ware-house, giving immediate notice thereof to the inspectors who stamped the same, and the inspectors of that ware-house where such tobacco shall be delivered, shall receive from the persons re-landing such tobacco, one shilling and six pence for every hogshead so re-landed, and shall give a receipt for the same, which money so received by the inspectors shall be paid by them to the person or persons entitled to receive the rent of the said ware-house.

Sec. 28. *And be it further enacted,* That if any inspector's receipt be casually lost, mislaid or destroyed, the person or persons entitled to receive the tobacco by virtue of any such receipt, shall make oath before any justice of the peace of the county where the same is payable, to the number and date of every such receipt, to whom and where payable, and for what quantity of tobacco the same was given, and that such receipt was lost, mislaid or destroyed, was lawfully entitled to receive the tobacco therein mentioned, and shall take a certificate thereof from such justice, and upon producing a certificate of such oath to the inspectors who signed such receipt, and

lodging the same with them, the inspectors shall and are hereby directed to pay and deliver to the person obtaining such certificate, the tobacco for which any such receipt was given, if the same or any part thereof shall not have been before by them paid by virtue of the said receipts, and shall be thereby discharged from all actions, suits and demands on account of such receipts; and if any person shall be convicted of making a false oath, or producing a forged certificate in the case aforesaid, such person shall suffer as in case of willful and corrupt perjury.

1798.

Penalty for false oath.

Sec. 29. *And be it enacted*, That when any new inspectors shall be appointed at any of the said ware-houses, such inspectors shall, and they are hereby required to give to the person or persons whom they shall succeed, a receipt with his or their hands subscribed, containing the numbers, marks, gross, tare and nett weight of all and every hogshead or cask of tobacco which shall be then remaining at the ware-house or ware-houses at which time they are appointed inspectors, with the delivery, and payment of which said hogsheads or casks of tobacco so remaining, he or they shall be thenceforth chargeable and liable; but he or they shall in no wise be accountable or answerable for the loss of weight or for quality of tobacco contained in any hogshead or cask, for which receipt was by him or them as aforesaid given. And if any hogshead or cask of tobacco shall hereafter be received by any person or persons whatsoever, and delivered out of any of the said ware-houses for exportation, by the inspector or inspectors attending the same, such inspector or inspectors, from the time of such delivery, shall be forever discharged and acquitted from all actions, costs and charges, for or by reason of the tobacco contained in any such hogshead or cask being unsound and unmerchantable, or of less quantity than the receipts given for the same shall specify, any thing herein before contained to the contrary notwithstanding. And when any prized tobacco shall be brought to any public ware-house in order to be shipped on freight or otherwise, and the inspectors there attending shall refuse to pass such tobacco, unless such as shall be bad and unmerchantable, shall be picked and separated from the rest; or where any light crop tobacco shall hereafter be brought to any of the said ware-houses, in either case,

New inspectors to give their predecessors a receipt for the tobacco in the ware-houses.

Inspectors discharged on the delivery of the tobacco.

Prizes to be used in turn, for prizing tobacco picked or light hoghead.

1798.

Penalty for taking and using draughts.

Inspectors to prize light crop tobacco on request.

Notes in the name of the owner, and not the overseer.

To give receipts for tobacco when brought in.

the said inspectors, if required, shall permit the owner or other person bringing such tobacco, to make use of one or more of their prizes for the re-packing, prizing or making heavier such tobacco, without fee or reward ; and if there shall be several hogsheads of tobacco, belonging to several owners, to be picked, re-packed or prized, at any public ware-house, the owner or other person bringing the same, whose tobacco shall be first viewed and refused or found light, shall be first permitted and allowed to make use of such prize or prizes for the purposes aforesaid ; and no inspector shall make or convert to his own use, or otherwise dispose of any draughts or samples of transfer or crop tobacco, but the same, if fit to pass, shall be put into the hogshead or bulk out of which it was drawn, under the penalty of forfeiting twenty shillings for every draught so taken away, and not returned as aforesaid, contrary to the directions of this act, to be recovered by the informer, one moiety to his own use, and the other moiety to the use of the proprietor of such tobacco, before any justice of the peace of the county wherein such offence shall be committed ; and all inspectors, if required, shall alter the mark and number of any hogshead of re-prized tobacco for which they have before given a receipt ; and for preventing confusion and mistakes, shall keep a waste book, in which shall be entered the marks and numbers of all hogsheads of tobacco received by them, and another book, in which shall be entered the marks, numbers and weights thereof, when the same shall be delivered out by them ; and all inspectors, when required, shall be obliged to prize any light hogshead of tobacco under one thousand pounds, so as to make it up the weight one thousand pounds nett, but shall receive the same fee upon such hogshead, as for transfer tobacco ; and where any tobacco shall be brought to the ware-house by the overseer or the owner thereof, the inspectors shall give receipts in the name of the owner and not of the overseer.

Sec. 30. *And be it enacted*, That the inspectors of tobacco at the several ware-houses within this state shall, immediately on the delivery of every hogshead of tobacco at the ware-house whereof they are inspectors, give a receipt for such tobacco if required by the proprietor or person bringing the same to the said ware-houses, expressing therein that the same is for uninspected tobacco.

so ; every inspector refusing so to do, shall forfeit and pay to the owner of such tobacco, the sum of twenty shillings. 1798.

Sec. 31. *And be it further enacted*, That all the penalties and forfeitures in this act contained and not herein before particularly appropriated, shall be one moiety to the commonwealth, and the other half for the person who shall inform and sue for the same, and shall be recovered with costs by action of debt or information in any court of record within this state, where the penalty or forfeitures exceeds five pounds, or one thousand pounds of tobacco ; and where the same does not exceed those sums, before any justice of the peace for the county where the offence shall be committed. And whereas recoveries and forfeitures inflicted by this act, are liable to be evaded by masters or commanders and skippers of vessels and other persons leaving this state before any action or suit brought for such recovery can be determined ; for remedy thereof, Penalties how to be recovered and applied.

Sec. 32. *Be it enacted*, That upon the appearance of the defendant in any action or suit brought against any master, commander or skipper of any vessel, or any other person, for a breach of this act, where the plaintiff shall move that the defendant may be held to special bail, the court may, if they see cause, rule him to give special bail accordingly, or commit him in custody of the sheriff, until such bail be given ; any law, custom or usage to the contrary notwithstanding. *Provided*, that nothing in this act contained shall be construed to affect any clause or clauses in the act passed at the present session, entitled "an act concerning the inspectors of tobacco at the rapids of Ohio," except so much thereof as relates to the ware-house rent and duty on tobacco, which shall be hereafter as at other ware-houses. Masters of vessels to be ruled to bail.

So much of all and every other act or acts, clause or clauses, as concerns the inspection of tobacco, shall be repealed, and the same is hereby repealed. Repealing clause.

This act shall commence and be in force from and after the passage thereof. To commence.

1798.

CHAPTER LXVII.

An ACT to amend an act entitled "an act to amend an act entitled "an act for opening a Road to Cumberland Gap."

Approved February 10, 1798.

SECTION 1. *BE it enacted by the General Assembly,* That from and after the time allowed the person now keeping the turnpike, agreeably to his agreement with the commissioners, the toll for wheel carriages shall be rated at nine pence for each wheel ; and the toll allowed the keeper of the turnpike for passing the same, shall in all cases be reduced one half : *Provided however,* that no toll whatsoever shall be collected from any person, or their property of any kind, who may be removing with their families to this commonwealth ; and in case of doubts, the keeper shall have a right to qualify such persons.

Recital. And whereas it is represented to this general assembly, that proposals are made to keep the wilderness road in good repair for the profits arising on the turnpike ; therefore,

Sec. 2. *Be it enacted,* That John Thurman be and he is hereby appointed keeper of the turnpike for and during the term of seven years from and after the passage of this act, provided he shall so long behave himself well ; who shall enter into bond with security, in the penalty of three thousand pounds, payable to the governor and his successors, to amend the road from Cumberland Gap to the Grassy Lick, and the road leading to Madison from the forks where it intersects the Crab Orchard road to Lee's Lick, and, where it is necessary, to make bridges and causeways, to keep the said road in good order for travellers and wheel carriages, during the time the said keeper shall keep the turnpike. And as a compensation therefor, he shall receive all the profits of the said turnpike from and after the expiration of the time allowed the person now keeping the turnpike agreeably to his agreement with the commissioners.

And be it further enacted, That it shall be the duty of the keeper of said turnpike to keep a correct list or schedule of the rates of toll affixed on each side of said gate, which list or schedule shall be printed in plain legible print, for the information of travellers ; and shall also

Rate of the
turnpike reduced
one half.

Certain persons
may pass toll
free.

John Thurman
appointed keeper
of the turn-
pike.

To give bond.
To keep the
roads in repair.

To make bridges,
&c.

And to receive
the whole toll.

To set up the
rates of toll.

keep at the said gate a copy of this act, which he shall shew to any passenger desiring to see the same. And for failing in any of these requisitions, or for demanding and receiving more or greater toll than is hereby required, he shall forfeit and pay the sum of ten dollars, recoverable with costs, by warrant before any justice of the peace, to the use of this commonwealth. 1798.
Penalty for his failure, or taking greater toll

Sec. 3. And the governor shall appoint, yearly, two persons to examine the road and conduct of the turnpike keeper; and such persons shall make report accordingly to the governor, who shall lay the same before the general assembly, at the next session. And the said examiners shall have power, and they are hereby authorized to direct what changes and repairs shall be at any time necessary in said road; and the turnpike keeper shall always make or have made such repairs and changes as they shall then order: *Provided*, that no very material change shall be made in the present general route of said road, but so far only as they shall think necessary for getting better ground, or avoiding hills or other bad places. Commissioners to be appointed, and their duty.
Necessary alterations to be made.

Sec. 4. In case the said road shall not be constantly kept in good repair as aforesaid, the said keeper of the turnpike shall, from time to time, be liable to presentment of the grand jury of either of the courts of the counties through which the said roadway passes, or in the district court held at Danville or Lexington, under the like regulations as are directed in presentments for not keeping other roads in this commonwealth in repair, except that it shall be in the power of the courts aforesaid, or either of them, to fine the said keeper for each offence a sum not exceeding twenty dollars; and except also, the said keeper shall not be liable to presentment as aforesaid, until after the first day of December next. Penalty for not keeping the road in repair.
How recoverable.

Sec. 5. *And be it further enacted*, That if the said John Thurman should die, or be displaced, or refuse to act, the governor is hereby directed to appoint some other person in his room, who shall give bond and security in like manner to keep the road in repair, and shall be subject to the same fines and forfeitures, and be entitled to like emoluments for his services; unless in case of death, the heirs and executors of the said Thurman shall give bond and security to keep the road in repair. Regulation in case of the death, &c. of the keeper.

1798.

as aforesaid, the remainder of the time that the said Thurman is entitled to keep the said turnpike agreeably to this act.

CHAPTER LXVIII.

An ACT to amend an act entitled "an act for establishing the Kentucky Academy, and incorporating the Trustees thereof."

Approved February 7, 1798.

CONFORMABLY to the petition of the trustees of the Kentucky Academy,

Majority of the trustees may constitute a board.

Sec. 1. *Be it enacted by the General Assembly*, That hereafter a majority of the trustees of the said academy, who, at the time being, have been qualified by taking the oath or affirmation of allegiance to this commonwealth, as by the said act is required, shall be a sufficient number to proceed to business; and in all cases where the concurrence of two-thirds of the trustees in service is made necessary by the said act, that hereafter the concurrence of a majority of the said trustees, qualified as aforesaid, shall be sufficient.

Clerk to take oath of office.

Records, &c. shall be deemed legal evidence.

Sec. 2. *And be it further enacted*, That the clerk or secretary to the board of trustees of the said Kentucky academy, shall take an oath or affirmation faithfully to execute, to the best of his abilities, the duties of his office, according to law; after which, the proceedings of the said board, recorded by the said clerk or secretary, and copies therefrom, attested by him, shall be legal testimony for or against the said board in any court of justice.

CHAPTER LXIX.

An ACT for the relief of Saunders Walker and Young Stokes.

Approved February 3, 1798.

Walker and Stokes had undertaken to clear the Crab Orchard road—they had entitled themselves to receive, and had received warrants on the treasury, in consideration of so doing; but there being no money in the treasury, they were obliged to sell the warrants at a discount of five per cent, which loss this act makes up to them.

CHAPTER LXX.

1798.

An ACT for the sale of a Public Lot.

Approved February 3, 1798.

The Legislature, in 1794, by a resolution, reserved a particular lot in Frankfort, for erecting a market-house on. This lot was found inconvenient for that use, and the Legislature by this act vested the lot in the Trustees of Frankfort, and they were directed to sell it to defray the expenses incurred in building the market-house then built.

CHAPTER LXXI.

An ACT for fixing the Seat of Justice for Madison County, and for other purposes.

Approved February 3, 1798.

WHEREAS it is represented to the present general assembly, that the court-house and jail of the county of Madison are rendered unfit for the use for which they were intended, and that from the late division of said county, and the extension of the settlements on the frontiers thereof, the present seat of justice is rendered inconvenient and uncentral to the great body of the people: and whereas it is further represented, that great injury and losses would be sustained by the citizens of Milford, should the seat of justice be removed therefrom; for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the General Assembly, That* Edmund Bullock, Robert Clark, jun. and Dillard Collins, or any two of them, be and they are hereby appointed commissioners to execute the duties hereby required to be performed; and if they shall refuse or neglect to do the same, then the county court (a majority of the justices being present) shall appoint three fit and proper persons, who being first sworn impartially to discharge the duties required by this act, shall immediately proceed to assess and value the amount of the losses of every person or persons holding any improved lot or lots within the said town of Milford, occasioned by the removal of the seat of justice therefrom, and make report thereof to the next county court, and thereupon, if it shall appear to the court, all circumstances considered, that it would tend to the general convenience, interest and happiness of the good people of the county, a majority of the justices aforesaid shall proceed to fix on the most eligible and convenient situation to the centre of

Commissioners appointed.

Their duty.

Court may fix on a place for seat of justice.

1798.

population for the permanent seat of justice for said county, and shall adjourn the court to such place, and cause the public buildings to be erected.

Justices to levy money, and for what.

Sec. 2. *And be it further enacted*, That a majority of the justices aforesaid shall, at the time of laying the next county levy, cause so much money as shall be necessary, including the subscription money, to be levied on the county, as will discharge the amount of the losses sustained by the citizens of Milford, and pay the same to each individual entitled thereto.

Annual levy for certain purposes

Sec. 3. *And be it further enacted*, That the county court shall have power from time to time, when laying the county levy annually, to levy on the county so much money as shall be necessary, including the sums subscribed, for erecting a court house, prison, pillory, stocks and whipping-post.

Recital.

And whereas it is represented to the general assembly, that large sums of money and property would be subscribed by individuals, for the purpose of reimbursing the citizens of Milford their several losses, which they might sustain by a removal of the seat of justice, and also for erecting the public buildings of said county, and thereby greatly lessen, if not wholly relieve the county from any expence, if authorised by law for that purpose ; therefore,

Commissioners appointed to open subscriptions.

Sec. 4. *Be it further enacted*, That Robert Caldwell, William Irvine, James Dinwiddy, Archibald Woods, James French and Samuel Fox, are hereby authorised and empowered to open subscription papers for the purpose of receiving subscriptions of money or property from any person or persons willing to subscribe, either for the purpose of reimbursing the losses of the citizens of Milford, or for erecting of the public buildings at the new seat of justice, and make due return of their proceedings from time to time, to the court. And if any person or persons shall fail to make payment of the sum or sums of money or property, and at the time or times specified in the articles of subscription, it shall be lawful for the said Robert Caldwell, William Irvine, James Dinwiddy, Archibald Woods, James French and Samuel Fox, or either of them, to recover the same, or the amount thereof, on giving ten days previous notice to the defendant, on motion in the court of quarter sessions of the county where the subscriber shall reside, or by

Subscriptions how to be recovered.

warrant before a single justice, as the nature of the case may require. And all sums so subscribed and received, shall be applied to the purpose for which the same shall have been subscribed.

1798.

Sec. 5. *And be it further enacted*, That the county court shall condemn two acres of land at the place so appointed for the permanent seat of justice, agreeably to the rules and regulations in similar cases, any pay for the same by a county levy, if it cannot otherwise be had.

Two acres of land may be condemned, and for what.

This act shall be in force from the passage thereof.

CAPTER LXXII.

An ACT for altering the time for holding Courts in the County of Montgomery.

Approved February 3, 1798.

SECTION 1. *BE it enacted by the General Assembly*, That so much of the act entitled "an act for the division of Clarke county," as provides for courts to be held by the justices of Montgomery county on the first Tuesday in every month, shall be and the same is hereby repealed.

Former law repealed.

Sec. 2. *And be it further enacted*, That the courts hereafter to be held in the said county of Montgomery, shall be on the second Tuesday in every month.

When Montgomery courts are held.

Sec. 3. *Be it enacted*, That the court of quarter sessions to be held for the county of Nelson, at their next April term, shall sit eleven juridical days; and the clerk of said court shall arrange the causes ready for trial upon the docket for the time aforesaid: that the court of quarter sessions for the county of Jefferson, at their next July term, shall sit eighteen juridical days, and the causes ready for trial shall be arranged on the docket by their clerk for the time aforesaid: that *subpoenas* for witnesses shall be issued as usual: and the said courts, during the additional days aforesaid, shall respectively have the same power in law and equity that they possess at the usual terms.

Additional days given to court of Q. Sessions in Nelson.

In Jefferson.

Sec. 4. That the court of quarter sessions for the county of Hardin that has heretofore been directed to be held in the month of October, shall be held on the same day in the month of November annually.

Courts of Q. S. in Hardin, when held.

1798.

CHAPTER LXXIII.

An ACT authorising the County Court of Clarke to lay their Levy, and for other purposes.

Approved February 10, 1798.

Preamble:

WHEREAS from the great number of justices of the peace commissioned for the several counties within this commonwealth, it has been found inconvenient and in some instances impracticable to comply with the requisitions of the act concerning titheables, and directing the mode of laying and collecting the county levy, directing that a majority of the justices for each county should meet in the month of October or November, for the purpose of laying the county levy; for remedy whereof,

Be it enacted by the General Assembly, That it shall
 Where courts and may be lawful for a majority of the justices for the
 have not laid following counties, viz: Mason, Harrison, Bourbon,
 the levies for Clarke, Franklin, or any other county in this common-
 the last year, wealth, in which the county levy was not laid agreeably
 how they may to the requisitions of the aforesaid act, to meet, or a ma-
 now do it. jority of them to meet in the months of February, March,
 or April, for the purpose aforesaid; and the levy laid
 by a majority of the justices for each, shall be as valid
 to all intents and purposes, as if the same had been laid
 by a majority of the justices in the months of October
 or November, 1797.

This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXIV.

An ACT giving a Representation to certain Counties therein mentioned.

Approved February 10, 1798.

BE it enacted by the General Assembly, That the county of Garrard shall hereafter be entitled to one representative, and the county of Madison three representatives; any law to the contrary notwithstanding.

This act shall commence and be in force from the passage thereof.

CHAPTER LXXV.

1798.

An ACT concerning a Lottery in the Town of Danville.

Approved February 3, 1798.

This act authorized raising the sum of two thousand dollars by lottery, for erecting a school-house, and other buildings, in or near Danville, and required one of the justices of Mercer to attend the drawing, to see that it was done fairly and without fraud.

CHAPTER LXXVI.

An ACT to amend the act establishing the Town of Harrodsburgh.

Approved February 10, 1798.

WHEREAS the law which established the town of Harrodsburgh, provides that a board of trustees of said town shall convey lots to such as become purchasers thereof, and the purchasers within a limited time shall build a dwelling house of a certain dimension on each lot, on pain of forfeiture; and whereas there are many valuable lots for other purposes, yet not suitable to reside on:

Sec. 1. *Be it therefore enacted by the general assembly,* That so much of the above recited act as subjects law repealed. *Part of former:* lots to forfeiture as aforesaid, shall be and the same is hereby repealed, and that the right, title and interest of the said lots shall vest in the purchasers, their heirs and assigns, in as full and ample a manner, as if so much of the above recited act as subjects the said lots to forfeiture, had never been made.

And whereas it is represented, that from the dispersed situation of the said trustees, it is difficult to convene a sufficient number from time to time, to constitute a board for the purpose of making deeds of conveyance to purchasers, in consequence of which, the said trustees appointed Thomas Allen their attorney in fact, to execute deeds to the purchasers, which not being authorised by law, doubts have arisen respecting the legality of the same:

Sec. 2. *Be it therefore enacted,* That the said deeds of conveyance, executed by the said Thomas Allen, as attorney in fact for the said board of trustees, for lots sold by them in the said town of Harrodsburgh, be legalized, and declared good and valid to all intents and purposes: *Provided,* That this act shall not extend to a

1798. confirmation of any title made to Hugh M'Cary, for Christiana's bounty lot in said town, for which a suit is now depending in the court of quarter sessions for Mercer county.

Sec. 3. *And be it further enacted*, That the said town of Harrodsburgh shall in future be regulated and governed by the rules and regulations prescribed by an act entitled "an act concerning the establishing of towns," passed in the year one thousand seven hundred and ninety-six.

This act shall be in force from the passage thereof.

CHAPTER LXXVII.

An ACT to amend an act, entitled "an act for the better regulation of the Town of Paris, and vesting the trustees with additional powers."

SECTION 1. *BE it enacted by the General Assembly*, That an election for trustees shall be held at the court-house in the town of Paris, by the sheriff of the county of Bourbon, or in case of his inability to attend, by one of his deputies, on the first Monday in March, annually, ten days previous notice being advertised by the said sheriff, in the most public places in the said town; and the names of the persons so elected, shall be returned to the clerk of the board of trustees, to be recorded in books to be by him kept for that purpose; and if the said sheriff shall fail or neglect to perform the duties enjoined by this act, he shall forfeit and pay the sum of fifty pounds, to be recovered by action of debt or information, in any court of record, the one half to the informer, the other half to be applied towards the general funds of the town.

Sec. 2. *Be it further enacted by the authority aforesaid*, That the notice of the ground appropriated by the trustees for the purpose of shewing stud horses, being published in the Kentucky Herald, the Rights of Man, or the Kentucky Gazette, three weeks successively, shall be deemed sufficient notice; and all persons shall be bound accordingly.

Sec. 3. *Be it further enacted by the general assembly*, That so much of the act, entitled "an act for the better regulation of the town of Paris, and vesting the trustees

with additional powers," as comes within the purview of this act, shall be and the same is hereby repealed.

1798.

This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXVIII.

An ACT to amend the act, entitled "an act to amend and reduce into one, the several acts for regulating the Town of Lexington, and for other purposes."

Approved February 3, 1798.

SECTION 1. *BE it enacted by the General Assembly,* That so much of the eighth section of the said act as authorises the trustees of the said town to take up or sell the swine of any person or persons, other than the inhabitants of the said town, shall be and the same is hereby repealed. Former law in part repealed.

Sec. 2. And if the said trustees, or any of them, shall take up, sell or destroy, any swine which may be found going at large in the said town of Lexington, except the swine of the inhabitants residing in the in and out lots of the said town, they shall be liable to the action of the party grieved, in which he shall recover his full costs. Regulations as to swine.

This act shall be in force from and after the first day of March next.

CHAPTER LXXIX.

An ACT supplemental to the act for regulating the Town of Lexington.

Approved February 10, 1798.

BE it enacted by the General Assembly, That all the owners of lots in the town of Lexington, on Main street, between Mulberry and Spring streets, shall before the first day of September next, pave with sound, well burnt brick, of the usual size, the fronts of their respective lots, agreeably to the custom established in the said town, and under the directions and regulations which may be prescribed from time to time, by the trustees of the said town; and in case the said owners of lots, or any of them, shall fail or refuse so to do, the trustees of the said town shall cause the same to be done at the expence of the said owners of lots; which said expence shall be levied Fronts of certain lots to be paved. Penalty for failure.

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1798. on, and recovered from the person or persons so failing and refusing, in like manner as other monies may or can now by law be levied and collected from the inhabitants of the said town, for any other purposes.

This act shall be in force from the passage thereof.

CHAPTER LXXX.

An ACT concerning the Trustees of the Town of Lancaster, in the County of Garrard.

Approved February 10, 1798.

Preamble.

WHEREAS it is represented to this present general assembly, that William Buford did lay off fifty-seven and one fourth acres of land into lots and a public square, at the place called the Cross Roads, in the said county of Garrard ; and that the said William Buford entered into bond with the county court of Garrard, to convey unto said court and their successors, for the use of the county, the public square, and one half of the lots so laid off ; and that in consequence thereof, part of the lots belonging to the donees, as well as part of the donor's, were sold by commissioners sooner than the act entitled "an act concerning the establishment of towns," admits ; for remedy whereof,

Proceedings of the trustees confirmed.

Be it enacted by the general assembly, That all sales made, and other proceedings had and done, in laying out the said town, be, and they are hereby declared good and valid : and that the trustees of said town, appointed by the county court of Garrard, shall be, and they are hereby fully authorised to make titles to said lots so sold, in the same manner that trustees are authorised to do by the act entitled "an act concerning the establishment of towns."

This act shall commence and be in force from the passage thereof.

CHAPTER LXXXI.

An ACT establishing an Inspection of Flour, Hemp and Tobacco, on the Lands of John Goggin, and for other purposes.

Approved February 10, 1798.

BE it enacted by the General Assembly, That there shall be an inspection of flour, hemp and tobacco estab-

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lished on the lands of John Goggin, near the mouth of Silver creek, in Madison county. Also an inspection of flour, hemp and tobacco in the town of Falmouth, at the forks of Licking, on a lot set apart for that purpose, called and known by lot No. 3.

1798.

CHAPTER LXXXII.

An ACT establishing an Inspection of Tobacco at Samuel Johnston's Ferry on the Kentucky River.

Approved February 10, 1798.

BE it enacted by the General Assembly, That an inspection of tobacco shall be established on the land of Samuel Johnston, at his ferry on the Kentucky river, subject to such rules and regulations as inspections of the like kind are under by the laws of this commonwealth.

This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXXIII.

An ACT concerning the Marriage of Rebecca Green.

Approved February 10, 1798.

This act authorized a divorce for five years desertion and inhuman treatment from John to Rebecca Green—the facts to be found by a jury.

CHAPTER LXXXIV.

An ACT concerning the Marriage of Sarah Oxford.

Approved February 10, 1798.

This act authorized a divorce of Sarah from William Oxford, on a jury's finding that he had deserted her three years, lived in adultery with another woman, and had become a citizen of another state.

CHAPTER LXXXV.

An ACT concerning the Marriage of Elizabeth Davis.

Approved February 12, 1798.

This act authorized Elizabeth to be divorced from Benjamin Davis, on a jury's finding that he had deserted her, and was living in adultery with another woman.

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CHAPTER LXXXVI.

An ACT authorising John Bailey to locate certain vacant Lands.

Approved February 10, 1798.

This act authorised John Bailey to locate not exceeding 1000 acres of land in Logan county, for the purpose of obtaining timber from it to support his Bloomery, paying thirty dollars per hundred acres.

* CHAPTER LXXXVII.

An ACT authorising Jacob Myers, & Co. to locate certain vacant Lands.

Approved February 10, 1798.

By this act, Jacob Myers, & Co. were authorised to locate not exceeding 2000 acres of land in Lincoln county, for the purpose of procuring timber from it for the Iron-works they were erecting, paying therefor, thirty dollars per hundred acres.

CHAPTER LXXXVIII.

An ACT establishing Bethel Academy, and incorporating the Trustees thereof.

Approved February 10, 1798.

Trustees.

SECTION 1. *BE it enacted by the General Assembly,* That the reverend Francis Paythress, John Knobler, Nathaniel Harris, John Metcalf, Barnabas M'Henry, James Crutcher, James Hord and Richard Masterson, shall be and they are hereby constituted a body politic and corporate, to be known by the name of Trustees of Bethel Academy, and by that name shall have perpetual succession, and a common seal, with power to change the same at pleasure; and as such shall be authorised to execute all powers and privileges that are enjoyed by trustees, governors or visitors of any college or university within this state, not herein limited or otherwise directed.

Their privileges and powers.

Annual meetings to be held.

Sec. 2. The said trustees, or a majority of them, shall hold two stated, annual sessions in a year, or more, if to them it should seem necessary, at said academy.

Further powers.

Sec. 3. The said trustees and their successors, by the name aforesaid, shall be capable in law to purchase, receive and hold, to them and their successors, any lands, tenements, goods and chattels, of what kind soever, which shall be given or devised to, or purchased by them for the use of the said academy, and shall sell and dis-

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pose of the same in such manner as shall seem most conducive to the interest of the said academy.

1798.

Sec. 4. The said trustees may sue or be sued, plead or be impleaded, in any court of law or equity.

May sue or be sued.

Sec. 5. They shall have power, from time to time, to establish such by-laws, rules and ordinances, not contrary to the constitution or laws of this commonwealth, as they shall deem necessary for the government of the said academy, and form general rules by which it may be determined when any trustee shall have vacated his seat.

May establish by-laws.

Sec. 6. The president of said academy shall be a man of the most approved abilities in literature.

President.

Sec. 7. The trustees shall elect their president, treasurer and clerk, and so many professors, tutors or masters as may be necessary; and upon the death, resignation or legal disability of any of the said trustees, president, or other officers of the said academy, or any removal from office, the board of trustees shall, by appointment, supply the vacancy occasioned thereby; and all trustees and officers of said academy, shall be elected by ballot.

Trustees to elect officers & fill vacancies.

Sec. 8. The chairman of the trustees shall have power to call a meeting of the trustees, and it shall be his duty, on the request of any three of them, to do the same, whenever cases of emergency require it; but upon any called meeting the chairman shall give at least ten days notice from the date of his circular letter or publication of said meeting, and the business that required the call shall be communicated and particularly specified.

How meetings to be called.

Sec. 9. A majority of the whole number of trustees in service, shall constitute a board to do business, and a voice of the majority of the whole number present, shall decide any question, motion, resolution or appointment.

Majority to form a board.

Sec. 10. The treasurer, clerk and other subordinate officers, shall be subject to the direction of the board.

This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXXIX.

An ACT for the Division of Mason County.

Approved February 10, 1798.

SECTION 1. BE it enacted by the General Assembly, That from and after the first day of March next, all that

County formed.

1798.
 Boundary. part of the county of Mason included within the following bounds, to wit: Run a line south from the courthouse of Mason county to the North Fork of Licking, thence up the North Fork nine miles, when reduced to a straight line; at this point make the beginning; thence a straight line to the mouth of the Flat Fork of Johnston; thence to the mouth of Fleming a straight line, unless it strike Fleming, in that case, down Fleming to the mouth, and up Licking to the head thereof, and with the line of Montgomery county to the Virginia line; thence with the said line to that branch of Sandy which divides this state from the state of Virginia; thence down the said branch till it intersects a line drawn from the beginning as follows, to wit: From the beginning up the North Fork to the head of the South Fork thereof; thence with the dividing ridge between the waters of Licking and the Ohio, until it strikes the waters of Sandy; thence down such branch, east, to Sandy; to be called and known by the name of Fleming.
- Name. Sec. 2. After the said division shall take place, the courts for the county of Fleming shall be held on the second Monday in every month, and the courts of quarter sessions shall be held annually in the months of March, May, August and November, in such manner as is provided by law in respect to other counties within this state.
- Courts when held. Sec. 3. The justices named in the commission of the peace for the said county of Fleming, shall meet at the house of John Faris, in Flemingsburg, in the said county, on the first court day after the said division shall take place; and having taken the oaths prescribed by law, and the sheriff being duly qualified, the court shall proceed to appoint and qualify their clerk, and fix on a place for the seat of justice for the said county, and proceed to erect the public buildings at such place: *Provided always*, that the place for the permanent seat of justice, shall not be fixed, nor shall a clerk be appointed (except *pro tempore*) unless a majority of the justices of the court for which the clerk is to be appointed, concur; but shall be postponed until such majority can be had.
- Where and when justices to meet, and for what. Sec. 4. It shall be lawful for the sheriff of the county of Mason to make distress for any public dues or officers' fees, unpaid by the inhabitants within the bounds of the said county of Fleming at the time such division shall
- Proviso. Power of the sheriff of Mason.

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take place ; and he shall be accountable in like manner as if this act had not been passed.

1798.

Sec. 5. The courts of Mason county shall have jurisdiction in all actions and suits depending therein at the time of said division, and they shall try and determine the same, issue process and award execution thereon.

Court of Mason
to retain suits.

Sec. 6. Until an enumeration be made, agreeable to the constitution, the said county of Fleming shall be entitled to one representative in the general assembly ; and the said county of Mason shall retain the remaining three.

Fleming to
have a repre-
sentative.

This act shall commence and be in force from and after the first day of March next.

CHAPTER XC.

An ACT ascertaining the line between the Counties of Logan and Warren.

Approved February 6, 1798.

WHEREAS doubts have arisen respecting a part of the line dividing Warren and Logan counties, and as it appears evident from the petition praying the said division, that the settlement called the Georgia settlement was intended to be and continue in the county of Logan ; therefore,

Be it enacted by the general assembly, That all that settlement known by the name of the Georgia settlement, shall from henceforward be within the bounds and considered a part of the county of Logan ; and that the surveyors of the counties of Warren and Logan do, and they are hereby expressly directed to run one direct line from opposite Col. James Duggan's to the Tennessee line, so as to leave the said Georgia settlement within the county of Logan, as before recited, any law to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER XCI.

An ACT to amend an act entitled " an act to vest the Estate of Joseph Barnett, deceased, in Commissioners, for the benefit of his Creditors."

Approved February 3, 1798.

Vide Vol. I, Chap. 286.

This act requires the commissioners to advertise for a general meeting of the creditors, and on a deficiency of assets, to apportion the payments, confiding all debts as of equal dignity.

Y.

1798.

CHAPTER XCII.

An ACT to amend an act entitled "an act for selling part of the lands of which Alexander Reid died seized and possessed."

Approved February 3, 1798.

Vide Vol. I, Chap. 233.

The title to the land directed to be sold by the former act being defective, so that the commissioners could not sell it, they are directed by this act to sell Reid's undivided moiety of six hundred acres, in Lincoln county.

CHAPTER XCIII.

An ACT appointing commissioners to sell a tract of land, of which William Walker died seized, for the benefit of his heirs.

Approved February 7, 1798.

William Walker, of Woodford county, having died intestate, leaving six small children, and only sixty acres of land, this act directs that land to be sold by commissioners, and the money arising from the purchase, to be laid out in Green river lands.

CHAPTER XCIV.

An ACT to amend an act entitled "an act to establish a Town in the County of Mercer."

Approved February 10, 1798.

Preamble:

WHEREAS it is represented to this present general assembly, that doubts have arisen concerning the law establishing the town of Danville, and that the heirs of Walker Daniel, deceased, contrary to the spirit of the law establishing said town, and the deed made for seventy-six acres of land laid off for said town, are threatening to sell some part of the said streets, as well as the ground around the public spring, set apart for the use of the said town; and whereas the trustees of said town, by order of their board, have, agreeably to the plan of said town and the deed thereto annexed, ascertained and affixed the proper bounds of the lots and streets within the said town:

Plan of the town established.

Sec. 1. *Be it therefore enacted*, That the plan of the said town of Danville, as laid down by John Thomas, the county surveyor of Mercer, on the nineteenth day of June, one thousand seven hundred and ninety-seven, in conformity to the former plan, and in obedience to an order of the trustees, is and shall be considered as the es-

established plan of the said town of Danville, and that part called and known by the name of the public square, formerly vested in Harry Innes and Christopher Greenup, is hereby vested in the trustees, as the public square, for the use of the inhabitants of the said town.

1798.

Sec. 2. *And be it further enacted,* That the piece of ground adjoining the town lots and including the public spring, as laid off in said plan, and all the ground not heretofore deeded to individuals, lying between the extreme ends of the several streets, and the lines of the entire part, and the whole of the streets of said town, and that piece of ground lying between the land owned by Robert Craddock and the public square, being twenty-seven feet and an half wide and twenty poles in length, be and the same is hereby vested in the said trustees, for the use of the inhabitants of the said town.

Part of said town vested in trustees.

Sec. 3. The said trustees and their successors, or a majority of them, shall have power to erect a market-house in the said town, to appoint a clerk of the market and prescribe his duties, to regulate and repair the streets and highways in the said town, to make provision for the collecting and accounting for the taxes they are empowered by this act to levy, by appointing a collector, and directing distress to be made for delinquencies, or by any other ways or means, and to make such ordinances and regulations, not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for carrying this act into effect, and affix a penalty for the breach of any of the said by-laws, not exceeding the sum of ten dollars, to be recovered at the suit of the trustees, in the same manner as sums of the like amount are now recoverable by law. *Provided always,* that before any by-law or ordinance enacted by said trustees shall have any operation, it shall be advertised two weeks on some conspicuous place in said town.

Power of trustees.

Provido.

Sec. 4. The said trustees shall have power to impose taxes, not exceeding forty pounds annually, on the tithables and property, real and personal, within the said town and the limits thereof, who are entitled to vote for trustees.

Trustees may impose taxes.

Sec. 5. *And be it further enacted,* That on the first Monday in September next, and on the same day and month within every two years thereafter, every free male

When and how to be claimed

1798.

inhabitant above the age of twenty-one years, who shall have resided in the town of Danville six months, and who shall be seized or possessed of property to the amount of one hundred dollars, shall be authorised to vote for eight trustees, the election of whom shall be superintended by one magistrate at least; at which election the clerk of the town shall attend as the clerk of the election.

Shall appoint a clerk.

Sec. 6. *Be it further enacted*, That the present acting trustees shall, on or before the first day of April in the present year, and all future trustees shall, within one month next succeeding a biennial election, appoint some proper person as clerk of the said town, who shall take an oath well and faithfully to perform that office; and on the death, removal or resignation of such clerk, to appoint others to succeed him: and it shall be the duty of such clerk to advertise in the most public places in the said town, at least fourteen days previous to an election of trustees of the said town, of the time and place of electing the same, and shall enter the names of the persons elected as trustees of the said town on the records thereof, and also make return to the court of such county, where such town is established.

His duty.

Further provision respecting the election of trustees.

Sec. 7. *And be it further enacted*, That whenever the said town shall not have any acting trustees, or a majority thereof have died, removed or resigned, that on application of at least fifteen voters of the said town to the court of the county, the said court shall grant a writ of election, specifying the time and place of holding the same, for trustees. And the trustees of said town shall make a suitable allowance to their clerk, and levy the same upon the electors of the said trustees. It shall be considered that the power of the electors on choosing trustees, shall extend to any free male person within one mile of the court-house in the said town, who shall have resided therein for the space of six months, and who possess in their own right, a freehold estate within the town or limits aforesaid; *Provided nevertheless*, that nothing in this act contained shall be construed so as to affect the legal or equitable claims of any person or persons whatsoever, in and to any real property contained within the present plan or limits of the said town of Danville.

Allowance to the clerk.

Who may be a trustee.

Proviso.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER XCV.

1798.

An ACT authorising a Lottery in the County of Clarke.

Approved February 7, 1798.

Certain commissioners therein named are authorised to raise 1500 dollars by lottery, for the purpose of erecting a house for a grammar school in Clarke county. All clerks, drawers, and examiners, were required to be on oath, and a justice of Clarke county was to attend the drawing, to see that it was conducted fairly, and without fraud.

CHAPTER XCVI.

An ACT authorising a Lottery in Bairdstown.

Approved February 7, 1798.

Certain commissioners therein mentioned, were authorised to raise 2000 dollars, for erecting an house for Salem Academy, in Bairdstown. All clerks, drawers and examiners, were required to be on oath, and a justice of Nelson to attend the drawing.

CHAPTER XCVII.

An ACT for giving further time to the County Court of Shelby to settle with the Sheriff for 1795.

Approved February 6, 1798.

This act was temporary, and has had its effect.

CHAPTER XCVIII.

An ACT to amend an act, entitled "an act concerning the original Title Papers of Land in this state, remaining in the Register's Office in the State of Virginia."

Approved February 3, 1798.

WHEREAS unavoidable delays have prevented the act passed at the February session, entitled "an act concerning the original title papers of land in this state, remaining in the register's office in the state of Virginia," from being carried into effect; and from the great expence attending the execution of the said business, it is necessary that further provision be made for completing the same:

Be it enacted by the general assembly, That Edmund Thomas, the agent for the state, shall have the further time of nine months to complete the business enjoined him, according to the above recited act, any thing to the

1798.

contrary notwithstanding ; and shall moreover be allowed the sum of three thousand dollars, in addition to the sum already received, for finally completing the business enjoined him by the act aforesaid, one half of which he is entitled to receive on his requesting the same, and the other half on his producing the governor's certificate of his having completed the business ; and the auditor shall issue his warrant accordingly.

This act shall be in force from the passage thereof.

CHAPTER XCIX.

An ACT allowing William Croghan and James Thompson compensation for running the line from the head of Green River to Cumberland Mountain, and for establishing said line.

Approved February 2, 1798.

SECTION 1. *Be it enacted by the general assembly, That* William Croghan and James Thompson shall be allowed, for their personal services in running the line from the head of Green river to the Cumberland mountain, the sum of fifty pounds, to be divided between them ; also the further sum of twenty-eight pounds twelve shillings, disbursed by them, for the expences attending the same ; and that the auditor shall issue his warrants on the treasury for the sums aforesaid.

Sec. 2. *And be it further enacted, That* the line aforesaid, as run by the direction of James Thompson and William Croghan, from the head of Green river to the Cumberland mountain, and which divides what is called the military reserved land from the balance of the state, is hereby established as the true line.

This act shall commence and be in force from and after the passage thereof.

CHAPTER C.

An ACT for the relief of James S. H. Robards.

Approved February 13, 1798.

Robards was allowed by this act 60 dollars, for attending the court of appeals 60 days, and furnishing wood and making fires.

CHAPTER CI.

1798.

An ACT for the appointment of Commissioners in the Counties of Franklin and Bullitt, and for other purposes.

Approved February 10, 1798.

WHEREAS it is represented to the general assembly, Preamble. that the commissioners appointed to take in lists of taxable property in the counties of Franklin and Bullitt, have refused or failed to act, and thereby the commonwealth is subject to lose the revenue from the said counties :

Sec. 1. *Be it therefore enacted*, That the county courts of Franklin and Bullitt shall proceed, at their next or succeeding court to be held in their respective counties, to appoint commissioners for the purpose of taking in lists of taxable property, agreeably to the rules and regulations prescribed in the revenue law of 1797 ; and shall make returns agreeable to the said recited act, on or before the first day of May next. Commissioners appointed. Their duty.

And whereas the commissioners for taking lists of taxable property in Clarke county in the year 1797, did not return their books agreeable to law :

Sec. 2. *Be it further enacted*, That the said books shall be returned on or before the first day of March next ; and the said books so returned shall be and are hereby ratified and confirmed to be good and valid, any law to the contrary notwithstanding. Commissioners of Clarke to make return. Proceedings ratified.

This act to commence and be in force from and after the passage thereof.

CHAPTER CII.

An ACT for the appropriation of Money, and other purposes.

Approved February 12, 1798.

This is merely the usual appropriation act. No other part, except the following, is necessary for the information of the reader,

Sec. 2. *And be it further enacted*, That the secretary shall distribute the laws of the present session, agreeably to the directions of an act passed at the February session, one thousand, seven hundred and ninety-seven, entitled "an act for the appropriation of money, and for other purposes:" *Provided however*, That no person shall be entitled to more than one copy ; and the gover-

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nor shall be authorised to employ persons to convey the laws to the clerks of the several counties, and make them such allowances as he may think reasonable, as is by the before recited act required.

OF THE Session Acts, taken collectively, amount to 104, but among them two Acts of 1797 were printed.

November Session, 1798.

CHAPTER CIII.

An ACT to suspend the operation of the Revenue Laws, so far as respects the sale of Lands for the payment of taxes.

Approved November 15, 1798.

See the prælection to Chap. 10, of Vol. I.

BE it enacted by the general assembly, That so much of the revenue laws of this commonwealth, as enable the sheriffs to sell lands for the payment of the taxes due thereon, be, and the same are hereby suspended until the end of the present session of the general assembly, and no longer.

CHAPTER CIV.

An ACT prescribing the time of holding Courts in the Washington District.

Approved November 16, 1798.

WHEREAS doubts have arisen as to the time of holding courts, in the district composed of the counties of Mason, Campbell, Bracken and Fleming, on account of two laws having been passed at the last session on that subject; in order that no doubts may hereafter exist,

Sec. 1. *Be it enacted by the general assembly, That the district courts for said district, shall be held on the third Mondays in the months of February, June*

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and November, annually, any law to the contrary notwithstanding.

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Sec. 2. *Be it further enacted*, That all proceedings of the said court, at their two last terms, shall be, and the same is hereby ratified and confirmed, as fully as if the same had been held and done at the terms prescribed by law, and not further or otherwise.

CHAPTER CV.

An ACT for the appropriation of Money.

Approved November 24, 1798.

BE it enacted by the general assembly, That the sum of one hundred and eight pounds six shillings and eight pence be appropriated for discharging the rents of a house and other accommodations for the governor of this commonwealth, from the first day of September, one thousand seven hundred and ninety-seven, till the thirtieth day of September, one thousand seven hundred and ninety-eight, pursuant to an act, entitled "an act to provide houses for the accommodation of the governor of this commonwealth," passed at their general session, on the fourteenth day of December, one thousand seven hundred and ninety-six; and the auditor of public accounts is hereby required to issue his warrant to the commissioners accordingly, to be paid out of any public money in the treasury.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CVI.

An ACT giving further time to return Platts and Certificates to the Register's Office.

Approved November 24, 1798.

See the prelection to Chap. 38 of Vol. I.

BE it enacted by the general assembly, That the further time of one year, from and after the end of this present session of assembly, be allowed the owners of platts and certificates of survey, to return the same into the register's office, in which time the register of the land office shall receive all platts and certificates of survey, although not returned within the time hereto-

1798. fore limited by law. And such lands shall not be considered forfeited, or liable to forfeiture on that account. This act shall commence and be in force from and after the passage thereof.

CHAPTER CVII.

An ACT to amend an act entitled "an act to amend an act entitled "an act to vest the estate of Joseph Barnett, deceased, in Commissioners, for the benefit of his Creditors."

Approved November 24, 1798.

See Chaps. 286 of Vol. I, and 91 of this Vol.

The former acts had directed the commissioners to render an account in November, annually, to the county court of Hardin. But in that month, the quarter session, and not the county court, was by law directed to sit—wherefore, this act directs them to render their account in December, annually.

CHAPTER CVIII.

An ACT for the relief of William Barnet.

Approved December 7, 1798.

William Barnet was sheriff of Green; and having moved against his deputy for the taxes of the year 1796, the court, from some defect or supposed error, refused to grant him judgment. He thereupon appealed; and in consideration of this, and of the delay necessarily attendant on the appeal, this act gives him nine months time to pay up the balance of the revenue.

CHAPTER CIX.

An ACT to legalize the proceedings of one of the Commissioners of Bullitt County.

Approved December 7, 1798.

WHEREAS an act passed at the last February session of assembly, directing the county court of Bullitt to appoint a commissioner in the room of Thomas C. Brashear, commissioner for the south side of Salt river, in the year 1797, which act did not reach the said court in time for them to make an appointment agreeable thereto: And whereas the said Thomas C. Brashear hath, since the time required by law, returned to the clerk of the said court, and to the auditor of public accounts, each, a copy of his list or book of taxable property, but hath not returned one to the sheriff, in consequence of which neglect, the sheriff of the said county hath not been enabled to collect the taxes due in the said

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county on the south side of Salt river : for remedy whereof,

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Be it enacted by the general assembly, That the clerk of the county court of Bullitt, shall, and he is hereby required to make out and deliver to the sheriff of said county, a true copy of the commissioner's book in his office, returned by Thomas C. Brashear, commissioner for the south side of Salt river, and that the sheriff shall immediately thereafter, begin and collect the taxes, which may appear to be due from the said books, for the year 1797 ; and that he shall settle and pay into the treasury, the taxes aforesaid, on or before the first day of August next.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CX.

An ACT for the relief of Robert Campbell.

Approved December 7, 1798.

Robert Campbell, in consideration of his having received a wound in defence of his country, and of his being nearly deaf, very poor, and having a large family of helpless children, is exempted from paying the state price for 200 acres of Green river lands.

CHAPTER CXI.

An ACT concerning the Marriage of Elizabeth King.

Approved December 7, 1798.

Elizabeth was allowed a divorce from Robert King, on a jury's finding that he had deserted her and was living in adultery with another woman. And the same jury were to enquire into his property, and find the value of one third for the support of his wife and her children.

CHAPTER CXII.

An ACT for the relief of Collectors of Taxes in the Counties of Harrison and Clarke.

Approved December 7, 1798.

WHEREAS the high sheriffs of the counties of Harrison and Clarke, have refused to give security for the collection of the public taxes within the said counties ; and whereas the courts of the said counties did not appoint collectors of taxes within the same, until the months of June and September, by reason of which, the

1798.

usual length of time is not allowed to the said collectors to make their collections and settle their accounts ; for remedy whereof,

Be it enacted, That the said collectors shall be allowed the further time of six months for the settlement of their accounts with the auditor ; any law to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXIII.

An ACT to amend an act concerning the owners of Salt and Salt Petre Works.

Approved December 7, 1798.

Vide Chapter 16, of this Volume.

BE it enacted by the general assembly, That the owners or occupiers of the Upper and Lower Blue-Licks, and Salt-Lick, shall, within two months after the passage of this act, make and keep in good repair a fence of post and rails, or stone, at least five feet high, to include the works, and to extend so far that the bittern water or brine from the said works, shall not run beyond the said fence : the owner or occupier of those works, each, for every day that such fence shall not be so built, or when built shall be out of repair, shall forfeit and pay the sum of five dollars ; to be recovered by action of debt before any justice of the peace for the county wherein the offence shall have been committed, to the use of the informer.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXIV.

An ACT concerning the Seat of Justice in Fleming County.

Approved December 7, 1798.

WHEREAS many inconveniencies do arise to the people of Fleming, owing to a division in the members of the court of that county, upon the subject of a permanent seat of justice therein ; for remedy whereof,

Be it enacted by the general assembly, That the justices of the court of quarter sessions and of the peace for the said county of Fleming, or a majority of them, shall, on the second Monday in January next, meet at the house of John Faris, in Flemingsburg, in the said county, and being so met and convened, shall proceed, by a majority of votes of those who are present, to fix on a place for erecting a court-house in the said county, and direct the public buildings accordingly ; which place so to be fixed on, shall be the permanent seat of justice for the said county, any law to the contrary notwithstanding. In case a majority should not meet as aforesaid, on that day, those met may adjourn from day to day, until a majority shall have met, who shall then proceed as above directed.

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This act shall commence and be in force from the passage thereof.

CHAPTER CXV.

An ACT for erecting a new County out of the Counties of Lincoln and Green.

Approved December 10, 1798.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of June next, all that part of the counties of Lincoln and Green, included in the following boundary, to wit—beginning at the mouth of Rockcastle, thence up the same four miles, when reduced to a straight line, above the reserved line ; thence to the dividing ridge between Skeggs's creek and Buck creek, where the road crosses from Stephen Lankford's to Buck creek ; thence a straight line to the Round Knobs on Buck creek ; thence to the Greenriver Knobs ; thence south forty-five degrees west to the present line between Green and Lincoln ; thence to the proposed new county east line taken from Green ; thence with said line south to the state line ; thence along said line so far that a north line will strike the beginning, shall be one distinct county, and called and known by the name of Pulaski ; and all the residue of the said counties shall retain the name of Lincoln and Green.

Commence-
ment and bound-
ary.

Sec. 2. The courts of quarter sessions for said county, shall be held on the fourth Tuesday in the months of

Courts when
held.

1798. July, October, January and March in every year, and the county court of said county shall be held on the fourth Tuesday in every month in which the courts of quarter sessions are not hereby directed to be held.

Where and when justices to meet, and for what. Sec. 3. The justices to be named in the commission of the peace for said county of Pulaski, shall meet at the house of Thomas Hamford, upon the first court day after the said division shall take place; and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, shall then proceed to fix upon a place to hold courts in said county, in such place as shall be deemed the most central and convenient to the people, and thereafter the county court shall proceed to erect the public buildings at such place; and until such buildings are completed, the court of quarter sessions and county court may adjourn to such place or places as they may severally think proper.

Clerk appointed Sec. 4. The justices of the court of quarter sessions and the justices of the county court, at their first court, shall proceed to appoint and qualify their clerk: *Provided however*, that the appointment of a clerk, or of a place to erect the public buildings, shall not be made unless a majority of the justices of the county concur, and such appointment shall be postponed until such majority can be had; but each court may appoint a clerk pro tempore.

Sheriffs of Lincoln and Green to collect. &c. Sec. 5. It shall be lawful for the sheriffs of the counties of Lincoln and Green to collect or make distress for any public dues and officers' fees, which shall remain unpaid by the inhabitants thereof, at the time such division shall take place; and shall be accountable for the same in like manner as if this act had not been made.

Jurisdiction of the courts of Lincoln and Green. Sec. 6. The court of the said counties of Lincoln and Green, shall have jurisdiction in all actions which shall be depending before them at the time of such division; and they shall try and determine the same, issue process and award execution thereon.

When to be represented. Sec. 7. The said county of Pulaski shall not be entitled to a separate representation until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall be hereafter established by law.

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CHAPTER CXVI.

1798.

An ACT for opening a Road from Mann's Lick to Big Barren.

Approved December 10, 1798.

This act appoints commissioners to open a road from Mann's Lick, by the mouth of Salt river, to the mouth of Big Barren; provides that it shall not pass through any town-lot, without the consent of the owner, and that the proprietors of other lands through which it passes, shall have the same redress as in case of other roads.

CHAPTER CXVII.

An ACT allowing an additional term to the Court of Quarter Sessions for Mason County, and to authorise the said County Court to appoint a Collector.

Approved December 10, 1798.

WHEREAS the increase of business in the court of quarter sessions for the county of Mason, requires that another term be allowed:

Sec. 1. *Be it therefore enacted by the general assembly,* That the court of quarter sessions for Mason county, be, and they are hereby authorised and required to hold an additional term on the third Monday in April, annually, to continue for six juridical days.

And whereas the late sheriff of Mason county refused to undertake the collection of the revenue tax for said county, and no person will now undertake the collection thereof, without further time is allowed for making the same, and it is right and proper that the same be granted:

Sec. 2. *Be it therefore enacted by the general assembly,* That the county court of Mason, be, and they are hereby authorised and required to appoint, and take bond with sufficient security, of any fit person who may be willing to undertake such collection; and that the collector so appointed, have the further time of nine months from the date of such bond, to complete the same, and shall be liable to the same penalties for failure, and may for default, be proceeded against in the same manner as is prescribed by law in the case of collectors appointed for the collection of the revenue tax; and the said collector shall be entitled to the same commissions as are now allowed for the collection of public taxes.

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CHAPTER CXVIII.

An ACT to legalize the proceedings of the Surveyors of Lincoln County.

Approved December 11, 1798.

WHEREAS by reason of the death of Thomas Montgomery, late surveyor of Lincoln county, great inconveniences may arise to those who had surveys made by his deputies, before his successor, Jonathan Forbes and his deputies, were qualified : for remedy whereof,

BE it enacted by the general assembly, That the surveys made by the deputies of the said decedant, as well as those made by the said Jonathan Forbes, the present surveyor of said county of Lincoln, and by his deputies, shall be and remain as good and valid as if the said Thomas Montgomery had not died, or as if the said Forbes and his deputies had been legally qualified : *Provided,* That nothing herein contained, shall be construed so as to indemnify the said Forbes or the said deputy surveyors against any malfeasance or misfeasance in their respective offices.

And This act shall commence and be in force from and after the passage thereof.

CHAPTER CXIX.

An ACT explanatory and amendatory of the act entitled "an act to amend the Penal Laws of this Commonwealth."

Approved December 11, 1798.

Vide Chapter 4, of this Volume, and the notes.

WHEREAS it is represented to the general assembly, that doubts have arisen whether so much of the act entitled "an act to amend the penal laws of this commonwealth," as goes to the punishment of certain crimes therein mentioned, is now in force in this commonwealth ; to remove all doubts on that subject,

Be it enacted, That the whole of the said act, except such parts thereof as respects the purchase of a lot, and the erection of the buildings therein mentioned, shall be suspended in its operation, for and during the term of two years ; and that nothing in the said act mentioned, shall be so construed, as in any manner to affect, alter or

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change the penallaws which were in force in this commonwealth at the passage of the said act.

1798.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXX.

An ACT for establishing certain Boundary Lines.

Approved December 11, 1798.

WHEREAS by an act passed at the last session of assembly, entitled "an act ascertaining the line between the counties of Logan and Warren," it was directed that a settlement known by the name of Georgia Settlement, should appertain to the county of Logan; and whereas the surveyors of the said counties, in running the line to include the said settlement in the said county of Logan, differed in opinion and run different lines; and as it is necessary that the proper line should be known and established, therefore,

Be it enacted by the general assembly, That the said line last run by the surveyor of Logan county, shall be, and the same is hereby established the line between the counties of Logan and Warren, and that the line run by the surveyor of Woodford, between Scott and Franklin, be established the line between the counties of Scott and Franklin, any law to the contrary notwithstanding.

This act shall be in force from the passage thereof.

CHAPTER CXXI.

An ACT concerning Weights and Measures.

Approved December 11, 1798.

See Chapter 207 of this Volume.

WHEREAS the congress of the United States are empowered by the federal constitution, to fix the standard of weights and measures, and they have not hitherto passed any law for the aforesaid purpose: whereby an act passed by the general assembly of Virginia, in the year 1734, entitled "an act for more effectually obliging persons to buy and sell by weights and measures, according to the English standard," still remains in force in this commonwealth:

Preamble.

1798.

Governor to
procure a set of
weights & mea-
sures.

Capacities of
the bushel and
gallon.

Standard.

A set to be pro-
cured for every
county.

To be compa-
red with the
standard.

Keepers of
county standards

Weights and
measures to be
tried thereby &
sealed.

Fees for trying
and sealing.

Penalty for buy-
ing or selling by
other than law-
ful weights or
measures.

Sec. 1. Therefore, *Be it enacted by the general assembly*, That the governor be, and he is hereby authorised and directed, to procure one set of the weights and measures in the said act specified, with proper scales for the weights, together with measures of the length of one foot and of one yard ; and the bushel dry measure, shall contain two thousand one hundred and fifty and two-thirds solid inches ; and the gallon of wine measure shall contain two hundred and thirty-one inches ; and the said weights, measures and scales, shall be deposited in the custody of the secretary of state, to serve as a general standard for weights and measures within this commonwealth.

Sec. 2. *And be it further enacted*, That when the aforesaid weights, measures and scales, shall be procured as aforesaid, the governor shall cause to be made for each county within this state, one set of weights and measures, and the last mentioned weights and measures shall be compared by the secretary of state with the aforesaid general standard, and if found to agree therewith, shall be forthwith transmitted by him, together with scales proper for the weights to be procured as aforesaid, to the clerks of the several county courts in this state.

Sec. 3. *And be it further enacted*, That the said weights, measures and scales, shall be kept by such person in each county, as the court of the said county shall appoint ; and immediately after such appointment, the clerk shall make known the same by advertisement, to be fixed up at the door of the court-house. And all persons desirous of trying their weights and measures, may resort to the aforesaid county standards for that purpose ; and the persons appointed to keep the said standards, shall, if he find them true, seal them with a seal to be provided by the county court, at the expence of the county : and the persons appointed in the several counties to keep the said county standards, shall be entitled, for trying every steelyard and certificate thereof, to twenty-five cents ; for trying any weights or measures, and sealing the same, twelve and one half cents, for each weight or measure sealed, to be paid by the person for whom such service shall be done.

Sec. 4. *And be it further enacted*, That three months after the appointment of a person to keep the said county standards shall have been made known as aforesaid,

every person who shall knowingly buy, or who shall sell any commodity whatever by weight or measure, that shall not correspond with the said county standards, or shall keep any such for the purpose of buying or selling with them, shall for every such offence, forfeit and pay four dollars, to go towards lessening the county levy, and to be recovered before any justice of the peace for the county in which such offence shall be committed.

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Sec. 5. *And be it further enacted*, That the auditor of public accounts shall issue his warrant or warrants on the treasurer, to such amount as the governor shall certify to be due, and to such person or persons as the same shall be owing, for furnishing and transporting the aforesaid weights, measures and scales. Provision for paying for standards.

This act shall be in force from and after the passage thereof. To commence

CHAPTER CXXII.

An ACT concerning the Marriage of Mary Black.

Approved December 11, 1798.

Mary Black was entitled by this act to a divorce from Robert Black, on the verdict of a jury finding that he had deserted her three years, and failed to contribute any thing to her support.

CHAPTER CXXIII.

An ACT for the relief of John Holder.

Approved December 13, 1798.

Holder was security for Robert Higgins, sheriff of Clarke—an execution, obtained by the commonwealth against Higgins and his securities, had been levied on Holder's property, on a suggestion that Higgins had property. This act authorises a suspension of the proceedings against Holder; that the sheriff should return the execution paid by this act, but that the lien should be preserved, and other executions might go out against Higgins, or his estate—Holder's property to be sold by *venditioni exponas*, if the debt should not otherwise be discharged.

CHAPTER CXXIV.

An ACT to amend the act entitled "an act to amend and reduce the several acts of assembly for the Inspection of Tobacco into one act, and for other purposes."

Approved December 13, 1798.

Vide Volume I, Chapter 58.

SECTION 1. *BE it enacted by the general assembly*, Regulation
That where any inspection of tobacco is, or shall here- specification

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on which ware-
houses, &c. shall
be built.

after be established on any particular tract of land, or in any town, and no particular lot mentioned for that purpose, and where no ware-houses now are, or shall be built at any such place at the time of such establishment, the county court shall appoint two fit and proper persons to go thereon, and view and lay off by metes and bounds, so much land as they shall deem sufficient, not exceeding two acres, if out of town, and if in town, not exceeding two lots of half an acre each, at the most convenient and proper place whereon to erect ware-houses, prizes, and a funnel, and make report thereof to the court, which shall be entered of record; and thereafter the court shall proceed as directed by the said recited act.

Several new in-
spections estab-
lished.

Sec. 2. *And be it further enacted*, That an inspection of tobacco, hemp and flour, shall be established in the town of Port-William, on a lot of ground in the said town, known by No. 85, to be called and known by the name of Port-William; and also an inspection of tobacco, hemp and flour, in the county of Madison, on the land of Green Clay, at the mouth of Silver creek, and called and known by the name of Silver creek; and also an inspection of hemp, tobacco and flour, in the county of Garrard, on the lands of William Davis, at the mouth of Sugar creek, to be called and known by the name of Quantico; also an inspection of hemp, tobacco and flour, in the town of Gath, at the mouth of Locust, in the county of Fleming; also an inspection of hemp and tobacco, in the town of Greensburgh, in the county of Green; also an inspection of hemp, in the town of Lexington.

Frankfort in-
spection.

Sec. 3. *And be it further enacted*, That an inspection of tobacco be established in the town of Frankfort, where Daniel Weisiger hath built a ware-house, on a lot of ground known by the name of the Ware-House Lot, to be called and known by the name of Frankfort.

Dimensions of
tobacco hogs-
heads.

Sec. 4. *And be it further enacted*, That in future no hogshead shall exceed fifty-two inches in the length of the staves, and thirty-four inches in the raising head within the crows, making reasonable allowance for prizing, which allowance shall not exceed two inches above the guage in the prizing head.

And whereas the words "the first day of June, shall be delivered; but no inspector shall be obliged to view

any tobacco between" were omitted in the enrolled bill, by mistake, in the thirteenth section of the said recited act; for remedy whereof,

1798.

Sec. 5. *Be it further enacted*, That the said words "the first day of June, shall be delivered; but no inspector shall be obliged to view any tobacco between" shall be inserted in the thirteenth section of the said recited act, after the word "there" in the eleventh line of the printed copy.

Omission in a former act provided for.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXV.

An ACT for erecting a new County out of the Counties of Campbell and Bracken.

Approved December 13, 1798.

SECTION 1. *BE it enacted by the general assembly*, That from and after the tenth day of May next, all that part of the county of Bracken and Campbell, within the following bounds, viz: Beginning on the Ohio river, two miles below the mouth of Big Stepstone creek; thence a direct line across Main Licking, as far below the main forks of Licking, as it is from that place to the mouth of the north fork of Licking, above the said forks, to continue said line south seventy-six degrees west, until it shall strike the Scott and Franklin lines; thence with the same to the Harrison county line; thence with the same to Main Licking, to the mouth of the north fork; thence a direct line to the mouth of Big Stepstone, and down the Ohio to the beginning, shall be one distinct county, and called and known by the name of Pendleton. But the said county of Pendleton shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall be hereafter established by law.

Boundary.

Name.

When to be represented.

Sec. 2. The courts of quarter sessions for the said county, shall be held on the first Tuesday in the months of August, November, March and May, and the courts of the county shall be held on the first Tuesday in every month in which the court of quarter sessions are not hereby directed to be held.

Courts when held.

1798. **Sec. 3.** The justices to be named in the commission of the peace for both courts of said county of Pendleton, shall meet at the house of Thomas Anderson, in the town of Falmouth, in said county, upon the first court day after said division shall take place, and after having taken the oaths prescribed by law, and a sheriff being legally qualified to act, shall then proceed to fix upon a place to hold courts in the said county, in such place as shall be deemed the most central and convenient for the people, and thereafter the county court shall proceed to erect the public buildings at such place, and until such buildings are completed, the court of quarter sessions and county court may adjourn to such place or places as they may think proper. The justices of the court of quarter sessions, at their first session, and the justices of the county court, shall proceed to appoint and qualify their clerks: *Provided however*, That the appointment of a place to erect the public buildings, shall not be made, unless a majority of the justices of both courts concur therein, nor of a clerk, unless a majority of the court of which he is to be appointed, concur; but such appointment shall be postponed until such majority can be had; but such court may appoint a clerk *pro tempore*.
- Where and when justices to meet, and for what.**
- Provide.**
- Power of sheriffs of Campbell and Bracken.**
- Jurisdiction of Campbell and Bracken courts.**
- To commence.**
- Sec. 4.** It shall be lawful for the sheriff of Campbell and Bracken to collect and make distress for any public dues and officers' fees which shall remain unpaid by the inhabitants of said counties at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made.
- Sec. 5.** And the courts of the said counties of Campbell and Bracken, shall have jurisdiction in all actions which shall be depending before them at the time of such division, and they shall try and determine the same, issue process, and award execution thereon.
- This act shall commence and be in force from and after the 10th day of May next.

CHAPTER CXXVI.

An ACT for the division of Christian County.

Approved December 13, 1798.

SECTION 1. *BE it enacted by the general assembly*, That from and after the third Tuesday in May next, all that part of the county of Christian included in the following

bounds, viz: Beginning on the Mississippi, where the Tennessee state line strikes the same, and up the Mississippi to the mouth of the Ohio, and up the same to the mouth of Trade-Water, and up the same to Montgomery's Fork, thence up the said Fork, and the branch that intersects the ridge dividing the waters of Little river and Eddy creek, and with the said ridge to Cumberland river, thence a south course to the Tennessee state line, thence with the same to the beginning, shall be one distinct county, and called and known by the name of Livingston. But the said county of Livingston shall not be entitled to a separate representation until the number of free male inhabitants, above the age of twenty-one years, therein contained, shall entitle them to one representative, agreeable to the ratio that shall be hereafter established by law.

1798.
Boundary.

Name.
When to be represented.

Sec. 2. After said division shall take place, the courts of said county of Livingston shall be held on the fourth Tuesday in every month; the courts of quarter sessions in the months of February, April, June and September; and the county courts in every month in which the courts of quarter sessions are not held, in like manner as is provided in respect to other counties within this state.

Courts when held.

Sec. 3. The justices named in the commission of the peace for the said county, shall meet at the house of Michael Purties, in the said county, on the first court day after said division shall take place, and having taken the oaths prescribed by law, and the sheriff being legally qualified, the court shall proceed to appoint and qualify their clerk, and fix on a place for the seat of justice of said county, as near the centre thereof as situation and convenience will admit of; and proceed to erect the public buildings at such place, where the courts in future shall be held. *Provided, however,* that a place for the permanent seat of justice shall not be fixed upon, unless a majority of the justices of the county and quarter session courts, collectively, agree on the same; neither shall a clerk be appointed (unless *pro tempore*) except a majority of the justices of the court for which the clerk is to be appointed concur, but shall be postponed until such majority can be had. *Provided, however,* that it shall and may be lawful for the justices of the court of quarter sessions and county court, to meet at the same

When & where justices to meet, and for what.

Proviso.

Further proviso.

1798. time and place, to appoint a clerk or clerks to their respective courts, as they may severally choose to do.
- Power of the sheriff of Christian. Sec. 4. It shall be lawful for the sheriff of the county of Christian to make distress for any public dues or officers' fees, unpaid by the inhabitants within the bounds of the said county of Livingston at the time such division shall take place ; and he shall be accountable in like manner as if this act had not been passed.
- Jurisdiction of Christian courts. Sec. 5. The court of Christian county shall have jurisdiction in all actions and suits depending therein at the time of said division, and they shall try and determine the same, issue process, and award execution thereon.
- To commence. This act shall commence and be in force from and after the third Tuesday in May next.

CHAPTER CXXVII.

An ACT for forming a new County out of the County of Shelby.

Approved December 14, 1798.

- Boundary. SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of June next, all that part of the county of Shelby included in the following bounds, to wit : Beginning ten miles due north from the public square, on which the court-house of the said county of Shelby is now situated ; thence west to the Jefferson line, thence with said line to the Ohio river, thence up the Ohio with the meanders thereof six miles above the mouth of Corn creek, on a straight line from the mouth thereof, thence a straight line till it strikes the road leading from Shelbyville to the mouth of Kentucky, two miles north of Henry Dougherty's, thence a direct line to the Kentucky river two and a half miles above the mouth of Eagle creek, thence up the Kentucky river and the Franklin line so far till a west course will strike the beginning, shall be one distinct county, and called and known by the name of Henry.
- Name. Sec. 2. A court for the said county shall be held by the justices thereof on the fourth Monday in every month after said division shall take place, except those months in which courts of quarter sessions are held, in like manner as is provided by law in respect to other counties, and as it shall be by their commissions directed.
- When county court to be held

Sec. 3. The justices to be named in the commission ¹⁷⁹⁸ of the peace for the said county of Henry, shall meet at the house of Richard Rue, in the said county, on the first court day after such division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall immediately proceed to appoint and qualify a clerk, and fix upon a place for holding courts in said county; then the court shall proceed to erect public buildings in such place as the said court shall fix on for the seat of justice for the said county; and until such buildings are completed, shall appoint such place for holding courts as they may think proper. *Provided always*, that the appointment of a place for erecting the public buildings, and the appointment of a clerk, shall not be made unless a majority of the court of said county concur therein; and if a majority of the justices aforesaid are not present, then the appointment of a clerk shall be postponed until some court day, when a majority thereof shall be present, but the said court may appoint a clerk *pro tempore*.

^{Justice when & where to meet, and for what.}

Sec. 4. It shall be lawful for the sheriff of the county of Shelby to collect and make distress for any public dues and officers' fees, which shall remain unpaid by the inhabitants within the bounds of said county at the time the division shall take place; and shall be accountable for the same in like manner as if this act had not been made.

^{Power of the sheriff for Shelby}

Sec. 5. The court of Shelby shall have jurisdiction in all actions or suits in law or equity, that shall be depending before them at the time of the division; and shall try and determine the same, issue process and award execution.

^{And jurisdiction of the court.}

Sec. 6. The court of quarter sessions for said county shall be held, annually, in the months of June, September, February and April.

^{Q. Session court when held.}

Sec. 7. *Be it further enacted*, That the said county of Henry shall not be entitled to a separate representation until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law.

^{When to be represented.}

This act shall commence and be in force from and after the first day of June next.

^{To commence}

1798.

CHAPTER CXXVIII.

An ACT for forming a new County out of the County of Green.

Approved December 14, 1798.

Boundaries.

Name.

County court
when held.Where & when
justices to meet,
and for what.

Provide.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of July next, all that part of the county of Green, included in the following bounds, to wit: Beginning on the Warren line a west course from the Marrow-Bone Spring, thence east until it strikes the dividing ridge between the waters of Cumberland and Green river, and with the same to the waggon road leading from Colonel William Casey's to Burksville, at the head of Rennick's creek; thence eastwardly so as to leave the settlement of William Butler, jun. in Green county; thence to continue such a course as will just leave the settlement of Greasy creek in Green also; then east to the Lincoln line; thence south to the state line, and with it to the Warren line; thence with the Warren line to the beginning, shall be one distinct county, and called and known by the name of Cumberland. But the said county of Cumberland shall not be entitled to a separate representation, until the number of free male inhabitants, above the age of twenty-one years, therein contained, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law.

Sec. 2. A court for the said county shall be held by the justices thereof on the first Tuesday of every month after said division shall take place, in like manner as is provided by law in respect to other counties, and as shall be by their commissions directed.

Sec. 3. The justices to be named in the commission of the peace for the said county of Cumberland, shall meet at the house of Samuel Burks, Esq. in the said county, on the first Tuesday after such division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall proceed to appoint and qualify a clerk, and fix upon a place for holding courts in the said county; then the court shall proceed to erect the public buildings in such place; and until such buildings are completed, shall appoint such place for holding courts as they may think proper. *Provided always,* the appointment of a place

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for erecting the public buildings, and the appointment of a clerk, shall not be made unless a majority of the justices of the courts of said county concur therein; and if a majority of the justices aforesaid are not present, then the appointment of a clerk shall be postponed until some court day when a majority thereof shall be present, but the said court may appoint a clerk *pro tempore*. 1798.

Sec. 4. It shall be lawful for the sheriff of Green to collect and make distress for any public dues or officers' fees which shall remain unpaid by the inhabitants of the respective county at the time such division shall take place, and shall be accountable for the same in the like manner as if this act had not been made. And the court of Green shall have jurisdiction in all actions or suits in law or equity, that shall be depending before them, at the time of said division, and shall try and determine the same, issue process and award execution. Power of the sheriff of Green Jurisdiction of the courts of Green.

Sec. 5. The court of quarter sessions for said county shall be held, annually, in the months of August, October, March and May. Q. Session court when held.

CHAPTER CXXIX.

An ACT forming a new County out of the Counties of Franklin and Shelby.

Approved December 14, 1798.

SECTION 1. *BE it enacted by the general assembly,* That from and after the second Monday in May next, all that part of the counties of Franklin and Shelby, included in the following bounds, to wit: Beginning six miles above the mouth of Corn creek, on a straight line, and to run up the Ohio to the Campbell county line; thence along said line sixteen miles; thence to strike the Kentucky at the Rock spring, near the Claylick; thence down the river within two and an half miles of the mouth of Eagle creek; thence a direct line till it strikes the road from Shelbyville to the mouth of Kentucky, two miles north of Henry Dougherty's; thence a direct line to the beginning, shall be one distinct county, and called and known by the name of Gallatin. But the said county of Gallatin shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall Name: When to be presented.

1798. entitle them to one representative, agreeable to the ratio that shall be hereafter established by law.

County court
when held.

Sec. 2. A court for the said county shall be held by the justices thereof, on the second Tuesday in every month after said division shall take place, in like manner as is provided by law in respect to other counties, and as shall be by their commissions directed.

Where & when
justices to meet,
and for what.

Sec. 3. The justices to be named in the commission of the peace for the said county of Gallatin, shall meet at the house of Richard Marstison, in the said county, on the first court day after said division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall immediately proceed to appoint and qualify a clerk, and fix on a place for holding courts in said county; then the court shall proceed to erect the public buildings in such place; and until such buildings are completed, shall appoint such place for holding courts as they may think proper. *Provided always*, that the appointment of a place for erecting the public buildings, and the appointment of a clerk, shall not be made, unless a majority of the justices of the court of said county, concur therein. And if a majority of the justices aforesaid are not present, then the appointment of a clerk shall be postponed until some court day when a majority thereof shall be present; but the said court may appoint a clerk *pro tempore*.

Provide.

Powers of the
sheriffs of Shelby
and Franklin.

And it shall be lawful for the sheriffs of the counties of Franklin and Shelby, to collect and make distress for any public dues or officers' fees which shall remain unpaid by the inhabitants of the respective counties at the time the division shall take place, and shall be accountable for the same in like manner as if this act had not been made. And the courts of Franklin and Shelby shall have jurisdiction in all actions in law or equity that shall be depending before them at the time of the division, and shall try and determine the same, issue process and award execution.

Courts of Shel-
by & Franklin
to retain suits.

Q. S. then court
when held.

Sec. 3. The court of quarter sessions for the said county shall be held, annually, in the months of February, May, August and November.

To commence.

This act shall commence and be in force from and after the second Monday in May next.

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CHAPTER CXXX.

1798.

An ACT for the crection of a new County out of the Counties of Logan and Christian.

Approved December 14, 1798.

SECTION 1. *BE it enacted by the general assembly,* That from and after the fifteenth day of May next, all that part of the counties of Logan and Christian included in the following bounds, to wit: Beginning at the mouth of Mud river, running up said river with its meanders within three miles of the mouth of Wolf-Lick fork, on a straight line; from thence with a straight line to the Christian county line, six miles below Benjamin Hardin's; from thence on a straight line so as to strike Pond river, two miles below Joel Downing's; from thence down Pond river with the meanders to the mouth; from thence up Green river to the beginning, shall be one distinct county, and called and known by the name of Muhlenberg. But the said county of Muhlenberg shall not be entitled to a separate representation until the number of free male inhabitants therein contained above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law. After said division shall take place, the courts of the said county shall be held on the fourth Tuesday in every month, except those in which the courts of quarter sessions are hereby directed to be held. And the court of quarter sessions shall be held in the months of March, May, July and October, in such manner as is provided by law in respect to other counties in this state.

Boundaries.

Name.

When to be represented.

Courts when held.

Sec. 2. The justices named in the commission of the peace for the said county of Muhlenberg, shall meet at the house of John Dennis, in the said county, on the first court day after the division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the court shall proceed to appoint and qualify their clerk, and fix on a place for the seat of justice for the said county, and proceed to erect the public buildings at such place. *Provided always,* that the permanent seat of justice shall not be fixed, nor a clerk be appointed, (except *pro tempore*,) unless a majority of the justices of the court concur therein, but shall be postponed until such majority can be had.

Where & when justices to meet, and for what.

Provido.

1798. **Sec. 3.** It shall be lawful for the sheriffs of the counties of Logan and Christian, to make distress for any public dues or officers' fees unpaid by the inhabitants thereof at the time such division shall take place, and they shall be accountable in like manner as if this act had not passed.

Power of Logan and Christian sheriffs. The courts of the counties of Logan and Christian shall have jurisdiction in all actions and suits depending therein at the time of said division, and they shall try and determine the same, issue process and award execution thereon.

CHAPTER CXXXI.

An ACT to amend the act entitled "an act to amend the act for dividing the County of Clarke."

Approved December 17, 1798.

WHEREAS by the above recited act, it is provided that the levies laid by the county court of Clarke, previous to the erection of the county of Montgomery, as therein stated, should be divided between the said county of Clarke and Montgomery in proportion to the number of the ables contained in each; and whereas the sheriffs of said counties, by order of the respective courts thereof, in conformity to the said recited act, have made and concluded a settlement, but no special power being given to authorise a recovery of the money which may be due to the said county of Montgomery, either by motion against the late sheriff of Clarke or Montgomery counties: for remedy whereof,

Be it enacted by the general assembly, That it shall be lawful for the county court of Montgomery, by their order, to direct a motion by the attorney for the commonwealth of the said county of Montgomery, against the late sheriff of either of the said counties, for such sum as may appear to be in the hands of either, (as the case may be,) and which ought to be applied to the use of the said county of Montgomery; and the said attorney of the county of Montgomery aforesaid is hereby required and directed to make such motion, and the court of quarter sessions, either of the county of Clarke, or of the county of Montgomery, in whichsoever court the said motion shall be made, shall have jurisdiction

Power of the county court of Montgomery.

Duty of the attorney for the commonwealth. Jurisdiction of the Quarter Sessions courts.

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thereof under the regulations and in the mode of proceeding prescribed by law for the recovery of monies collected for the county levy; and the money when received shall be applied as prescribed by the aforesaid recited act. 1798.
Money how applied.

CHAPTER CXXXII.

An ACT for the relief of a certain Sheriff, Venire and Witnesses.

Approved December 17, 1798.

The sheriff of Nelson had attended at Frankfort with a venire and witnesses for the trial of James Graham, for felony, in the court of oyer and terminer; but prior to the day of appearance, that court had been abolished. This act allows them the same compensation as in other cases, for such attendance.

CHAPTER CXXXIII.

An ACT for altering certain Court Days.

Approved December 17, 1798.

SECTION 1. *BE it enacted by the general assembly,* Fleming Q. S. That the court of quarter sessions for the county of court when to Fleming, shall be held on the second Monday in the be holden. months of April, June, September and December, annually; and that the terms of said court, as heretofore held, in the months of March, May, August and November, be discontinued.

Sec. 2. *And be it further enacted,* That the courts of Franklin courts quarter sessions for the county of Franklin, shall be held when to be holden. on the fourth Tuesdays (instead of the third) in the months of March, May, July and October, annually; and the county courts for the said county of Franklin, shall be held on the fourth Tuesdays in every month, except those months when the quarter sessions are held, any law to the contrary notwithstanding.

Sec. 3. All writs or process, of whatever kind, that have or shall be issued to any of the first terms of the courts before mentioned, the time of sitting of which is hereby altered, they shall be returned to the court as herein directed to be held, and shall be as valid to all intents, as if made returnable thereto; and all bonds and recognizances, taken for the appearance of any person or persons at the said court, shall be as valid to all intents Direction to process issued.
Validity of the bonds and recognizances taken.

1798. and purposes, to compel an appearance at the court, as herein directed to be held, as if taken for their appearance at such courts.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER CXXXIV.

An ACT to authorise the Trustees of the Jefferson Seminary to raise a sum of Money by Lottery.

Approved December 17, 1798.

BE it enacted by the general assembly, That the trustees of the Jefferson seminary, shall be, and are hereby authorised and empowered, to raise by one or more lotteries, any sum of money not exceeding five thousand dollars, to be applied by the said trustees to the use and benefit of the said seminary.

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CHAPTER CXXXV.

*An ACT for reforming certain rules of Legal Construction.*

Approved December 17, 1798.

This act is copied from an act of 1789.

SECTION 1. *BE it enacted by the general assembly,* That whensoever one law which shall have repealed another, shall be itself repealed, the former law shall not be revived without express words to that effect.

Sec. 2. *Be it further enacted,* That every act passed during any stated annual session, shall commence and be in force at the expiration of three months from its passage, unless in the act itself, another day be particularly mentioned for the commencement thereof.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER CXXXVI.

An ACT for erecting a new County out of the County of Hardin.

Approved December 17, 1798.

Vide acts of 1799, chapter 197, of this volume.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of July next, all that

part of the county of Hardin that is included in the following bounds, viz : Beginning on the Ohio river, at the mouth of Blackford's creek ; thence up the same to the head of the south-east fork that heads opposite the head of Harris's fork of Rock-Lick creek ; thence across the dividing ridge to said Harris's fork ; thence down the same to Rock-Lick creek ; thence down the same to Rough creek ; thence down the same to the Flat Clay creek on Bear creek, and down the same to Green river, and down Green river to the Ohio, and up the Ohio to the beginning, shall be one distinct county, and called and known by the name of Ohio. But the said county of Ohio shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law.

1798.
Boundaries.

Name.
When to be represented.

Sec. 2. A court for the said county shall be held by the justices thereof, on the first Tuesday in every month, except in the months the court of quarter sessions are hereafter directed to be held, after said division shall take place, in the manner as is provided by law in respect to other counties, and as shall be by their commissions directed.

When county court to be held

Sec. 3. The justices to be named in the commission of the peace for said county of Ohio, shall meet at the house of Robert Mosely, in the said county, on the first court day after said division shall take place, and having taken the oaths prescribed by law, and a sheriff being duly qualified to act, the justices shall proceed to appoint and qualify a clerk, and fix upon a place to hold courts in the said county, at or as near the centre thereof, as the situation and convenience of the place will admit ; and thenceforth the said court shall proceed to erect necessary public buildings at such place, and until such buildings be completed, to appoint such place for holding courts, as they shall think proper : *Provided always*, That the appointment of a place for erecting the public buildings, and of a clerk, shall not be made, unless a majority of the justices of the court of the said county concur therein ; but such appointment shall be postponed until some court day when a majority shall be present, but the court may appoint a clerk pro tempore.

When & where justices to meet, and for what.

Provided.

1798. *Q. Session court when held.* Sec. 4. *And be it further enacted,* That the court of quarter sessions for the said county, shall be held, annually, in the months of November, February, April and June.

*Power of the-
riffs of Hardin.* Sec. 5. It shall be lawful for the sheriff of Hardin to collect and make distress for any public dues or officers' fees which shall remain unpaid by the inhabitants thereof at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made.

*Jurisdiction of
Hardin courts.* Sec. 6. And the court of the said county of Hardin shall have jurisdiction in all actions and suits in law and equity which shall be depending before them at the time of such division; and shall try and determine the same, issue process, and award execution thereon.

CHAPTER CXXXVIII.

An ACT to amend an act entitled "an act to amend an act entitled an act for opening the Navigation of the South and Stoner's Fork of Licking."

Approved December 18, 1798.

Preamble.

WHEREAS it is provided by an act of assembly, entitled "an act to amend an act entitled an act for opening the navigation of the South and Stoner's fork of Licking," that the trustees named in said act, or a majority of them, shall take bond with sufficient security, from each and every person or persons to whom they shall entrust for sale, tickets in the lottery authorized by the said act, in double the amount of the said tickets, with condition to be void in case he or they shall pay the amount of the sales of the same, to the person or persons who may, by the event of the said lottery, be entitled thereto; and as it is represented to this general assembly, that it would greatly conduce to the sale of the said tickets, that the same should be sold at a credit of twelve months from the time of drawing the said lottery; and as it is represented that persons may be employed to remove all the obstructions in the said South and Stoner's fork of Licking, who will receive in payment therefor, such bonds as may be taken by said trustees, from persons entrusted with the sale of said tickets:

Be it therefore enacted, That the persons named in the act aforesaid, or a majority of them, are hereby authorised to entrust for sale, to any fit and proper person or persons, any number of tickets in said lottery, upon his or their giving bond and security to the trustees aforesaid, to be approved of by them, and to be taken in double the amount of said tickets, to be void in case he or they shall pay the amount of the sales of the same; in twelve months from the time the drawing of said lottery is finished; and the said trustees are hereby authorised to assign the said bonds to the person or persons undertaking to remove the obstructions in the said South and Stoner's fork of Licking, after they have completed the same, or at any time before, if the said trustees shall be of opinion that the transfer of said bonds is necessary to enable the persons undertaking the same to prosecute the said work with effect.

This act shall commence and be in force from and after the passage thereof.

1798.

Power of trustees respecting the sale of tickets.
Bond & security required.
When void,

Bonds to be assignable.

To commence.

CHAPTER CXXXIX.

An ACT giving further time to Robert Craig to repair the Wilderness Road.

Approved December 18, 1798.

BE it enacted by the general assembly, That the further time of six months be given to the said Robert Craig to repair the said road, from and after the first day of December, one thousand seven hundred and ninety-eight.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXL.

An ACT for calling a Convention.

Approved December 18, 1798.

SECTION 1. *BE it enacted by the general assembly,* That the qualified electors within this state in the year one thousand seven hundred and ninety-nine, shall at the same time and place in voting for members to the general assembly, vote for members to represent them in the convention for the purpose hereafter directed.

Duty of the qualified electors.

1798.

Of the sheriffs
and judges of e-
lections.

Penalty on fai-
lure.
Convention to
keep open doors

Number of
members to be
elected from
each county.

How long to
continue in of-
fice.

Where & when
to meet.

Two-thirds re-
quisite to do bu-
siness.

Their compen-
sation.

Christian and
Warren to send
extra members.

To commence.

And the sheriffs of the several counties, and judges hold-
ing elections, shall, in receiving the votes, keeping the
polls, and making their returns for members to the con-
vention, act agreeably to the law entitled "an act con-
cerning elections," and shall be subject to the same pe-
nalties as are inflicted by the recited act for neglect in
similar cases. The convention so called, shall sit with
open doors, and the citizens of this commonwealth be
permitted to attend and hear the debates.

Sec. 2. There shall be elected in each county within
this state, the same number of representatives to con-
vention as they shall be then respectively entitled to in
the house of representatives by law; and the members
who shall be so elected, shall continue in appointment
for four months from the time of the election, unless the
business before them be sooner completed; and shall
meet in the state-house in Frankfort, on the twenty-se-
cond day of July, in the year aforesaid; two-thirds of
the whole number of members elected shall be necessary
to constitute a quorum to do business; who, after ap-
pointing a president and other proper officers, and fixing
their rules of proceeding, shall take into consideration
the constitution of this state, or present form of govern-
ment, and the propriety of altering, amending, or re-
adopting the same.

Sec. 3. The president and members of the said con-
vention shall receive the same compensation per day,
and the same mileage and allowances for ferriages, as
the members of the general assembly, and shall make
such allowances to their officers as they may think ne-
cessary, and the auditor shall issue warrants on the trea-
surer for payment accordingly.

Sec. 4. *And be it further enacted,* That the counties of
Christian and Warren, shall at the next general election
be entitled to vote for one representative in each county,
to serve in the next general assembly, and also one in
each county to represent them in the convention.

This act shall commence and be in force from and af-
ter the first day of March, one thousand seven hundred
and ninety-nine.

CHAPTER CXLI.

1798.

An ACT for the relief of William Tompkins.

Approved December 19, 1798.

William Tompkins having, by mistake, surveyed his entry on a prior claim, was permitted to withdraw the plat and certificate of survey from the register's office, on filing a relinquishment of all title which might be derived under it.

CHAPTER CXLII.

An ACT establishing sundry Inspections.

Approved December 19, 1798.

Vide Vol. I. Chap. 58 and the notes.

WHEREAS it is represented to the general assembly, that an inspection of tobacco, hemp and flour, established on the land of David Walker, at the place called Eddyville, on Cumberland river, would be of public utility :

Preamble.

Sec. 1. *Be it enacted by the general assembly,* That an inspection of tobacco, hemp and flour, shall be established on the lands of David Walker, at the place called Eddyville, on Cumberland river, to be called and known by the name of Eddyville ; and also an inspection of tobacco in the county of Madison, on the lands of William Mayo, jun. near the mouth of Hinds's lick creek, to be called and known by the name of Hinds's ; subject to the same rules and regulations as inspections of the same kind are by law established.

Eddyville inspection.

Hinds's inspection.

Sec. 2. *Be it further enacted by the general assembly,* That an inspection of tobacco be established at the mouth of Hardin's creek, on the lands of the heirs of Jacob Doom, deceased, at the same place where there is an inspection of flour and hemp already established by law, to be called and known by the name of Doom's ; under the same rules and regulations that other inspections are.

Doom's inspection.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER CXLIII.

An ACT for the division of Fayette County.

Approved December 19, 1798.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of February next,

1796.
Boundaries.

all that part of the county of Fayette, included in the following bounds, to wit: Beginning on the Woodford line where it strikes the Kentucky river, near Todd's ferry; thence along said line half a mile north of John Allin's military survey; thence to the seven mile tree on Curd's road; thence to the eight mile tree on Tate's creek road; thence along said last mentioned road to the Kentucky river; thence down the Kentucky river to the beginning, shall be one distinct county, and called and known by the name of Jessamine.

Name,
County court
when held.

Sec. 2. A court for the said county shall be held by the justices thereof, on the fourth Monday in every month (except those in which the court of quarter sessions are hereafter directed to be held) after said division shall take place, in like manner as is provided by law in respect to other counties, and as shall be by their commissions directed.

Where and
when justices
to meet, and
for what.

Sec. 3. The justices to be named in the commission of the peace for the said county of Jessamine, shall meet at the house of Fisher Rice, in the said county, on the first court day after said division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall proceed to appoint and qualify a clerk, and shall, together with the justices of the court of quarter sessions for said county, fix upon a place for holding courts therein; then the courts shall proceed to erect the public buildings in such place; and until such buildings are completed, shall appoint such place for holding courts as they may think proper: *Provided always*, That the appointment of a place for erecting the public buildings shall not be made, unless a majority of the justices of the said courts concur therein.

Provide.

Power of the
Fayette sheriff.

Sec. 4. It shall be lawful for the sheriff of the county of Fayette to collect and make distress for any public dues or officers' fees which shall remain unpaid by the inhabitants of the county at the time of such division, and shall be accountable for the same in like manner as if this act had not been made.

Fayette court
to retain suits.

Sec. 5. The court of Fayette shall have jurisdiction in all actions or suits in law or equity, that shall be depending therein at the time of such division, and shall try and determine the same, issue process, and award execution thereon.

Sec. 6. The court of quarter sessions for the said county of Jessamine, shall be held, annually, on the fourth Monday in January, March, July and October. 1798.

Sec. 7. The said county of Jessamine shall send one representative to the general assembly, and the county of Fayette shall retain six representatives. When to be re-presented.

This act shall commence and be in force from and after the passage thereof. To commence.

CHAPTER CXLIV.

An ACT to amend and declare the Law relative to the Trial of Slaves.

Approved December 17, 1798.

See the prelection to chap. 44 of vol. 1, and chap. 3 of this vol.

SECTION 1. *BE it enacted by the general assembly,* Justice's duty That when a slave or slaves shall be charged with any crime, the justice before whom he shall be charged, if when a slave is charged before him. there appears to him to be just ground for the charge, shall issue his warrant to the sheriff of the county where the offence was committed, to summon the justices of the court of quarter sessions of the county where the crime is alledged to have been committed, in the same manner, and to meet within the same time as is directed in the case of a free person charged with any crime, and also to summon a jury of the vicinage, not being the master of such slave or slaves, or related to the master or prosecutor of such slave or slaves in any degree which which would be a cause of challenge to a jurymen in a trial between free persons, to appear at the same time and place for the trial of the said slave or slaves. The said justices so met shall be a court of oyer and terminer for the trial of the said slave or slaves, and may adjourn from day to day, or for any number of days not exceeding ten, if the witnesses for the prosecution or for the prisoner cannot sooner be had, or if the trial cannot be sooner finished. Sheriff to summon court, and a jury. Justices to be a court of oyer & terminer, and may adjourn, &c

Sec. 2. Three justices shall be necessary to constitute a court; and if a sufficient number of justices shall not meet, it shall be the duty of the justice or justices present, to issue a precept under his or their hands, and directed to the sheriff, commanding him to summon such a number of the justices of the county court (the justice What number to constitute a court, and how convened.

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who committed the slave excepted) most convenient, as will be sufficient, together with such justice or justices of the court of quarter sessions, to make up the number required by this act to constitute a court; and such justices shall have the same power and authority, and shall proceed in the same manner as if the court was composed of the justices of the court of quarter sessions; any law to the contrary notwithstanding.

Owner may bail his slave.

Sec. 3. *And be it further enacted*, That when any slave or slaves shall be imprisoned under this act, the owner of such slave or slaves may bail such slave or slaves in those cases in which free persons are bailable, agreeable to the rules established by law with respect to free persons.

Duty of justice before whom a slave is charged, after the last day of March.

Sec. 4. *And be it further enacted*, That from and after the last day of March next, when a slave or slaves shall be charged with any crime, the justice before whom he, she or they shall be charged, if there appears to him to be just ground for the charge, shall issue his warrant to the sheriff of the county where the offence was committed, directing and commanding him to keep such slave or slaves in the jail of his county, until he, she or they shall be discharged by due course of law. And the court of quarter sessions of the county where the offence was committed, at their next term after the commitment of any slave or slaves, if a court shall be then held, if not, the next term, shall proceed to try such slave or slaves, pronounce judgment, and award execution in all respects agreeable to the rules and regulations established by law in the district courts for the trial of free persons, except that the testimony of negroes, mulattoes and Indians shall be admitted on the trial of such slave or slaves, according to the rules contained in an act entitled "an act to reduce into one the several acts respecting slaves, free negroes, mulattoes and Indians."

Power and duty of the quarter session courts on trial of slaves,

All and every act or acts coming within the purview of this act, shall be, and the same are hereby repealed.

CHAPTER CXLV.

An ACT for altering the time of holding Courts in the Counties of Hardin and Bourbon.

Approved December 19, 1798.

Hardin courts, when held.

SECTION 1. *BE it enacted by the general assembly*, That the quarter session courts for Hardin county, shall in

future, be held on the fourth Tuesday in April, June, 1798
September and February; and that the county courts
shall be held on the fourth Tuesday in every other month.

Sec. 2. *Be it further enacted*, That the court of quar- Bourbon courts
ter sessions for the county of Bourbon, heretofore di- when held.
rected by law to be held on the third Monday in De-
cember, annually, shall be held on the third Monday in
November, in every year; and that the county court for
the said county, shall be held on the third Monday in
December, instead of November, in every year; and it
shall be the duty of the justices of the peace for the said tices thereof to
county, to lay the county levy for their county, at the lay the county
court to be held in the month of October or December, levy.
under the same rules and regulations as heretofore pre-
scribed by law. And the court of quarter sessions for
the said county of Bourbon, to be held on the third
Monday in August annually, shall sit twelve juridical
days, unless the business then depending before the
court, and ready for trial, shall sooner be finished.

This act to commence and be in force from and after To commence.
the next court of quarter sessions, to be held for the said
counties.

CHAPTER CXLVI.

An ACT for establishing the Winchester Academy.

Approved December 19, 1798.

SECTION 1. *BE it enacted by the general assembly*, Names of the
That Robert Clark, sen. Hubbard Taylor, John Lyle, trustees.
Robert Clark, jun. Richard Hickman, William Cave-
naugh, Jacob Fishback, David Bullock, William Sud-
duth, Dillard Collins, John Irwin, Patterson Bullock
and Robert Elkins, shall be, and they are hereby con-
stituted a body politic and corporate, to be known by
the name of the Trustees of the Winchester Academy,
and by that name shall have perpetual succession and a
common seal, with the power to change the same at
pleasure, and as such shall be authorised to exercise all Powers and pri-
vileges of the
powers and privileges that are enjoyed by trustees, visi- trustees.
tors, and governors of any college or university within
this state, not herein limited or otherwise directed.

Sec. 2. The said trustees shall hold their first stated Their first
session at the town of Winchester, in the county of meeting, when
& where held.
Clarke, on the third Monday in March next; and they,

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or two-thirds of them at least, shall then, or as soon as they think proper, fix upon a place for a permanent seat of said academy, and proceed to erect buildings thereon; and until suitable buildings and regulations are made at such place, they may commence and proceed in the institution at any other place they shall judge proper.

Their legal
abilities.

Sec. 3. The said trustees or their successors, by the name aforesaid, shall be capable in law to purchase, receive, and hold, to them and their successors, for the use and benefit of said academy, any lands, tenements, and rents, goods and chattels, of what kind soever, which shall be given or devised to, or purchased by them for the use of said seminary, and also to demand and receive from the collectors, or other persons appointed by the original subscribers to this institution, such sums of money or property as may be collected or subscribed for, from the said subscribers. No donation given or received for the use of this seminary, shall be appropriated to the use of any other seminary. The said trustees by the name aforesaid, may sue or be sued, plead or be impleaded, in any court of law or equity in this state.

To hold two
sessions a year.

Sec. 4. The said trustees shall hold two stated sessions in each year, at such time or place as they shall judge proper; and in case a sufficient number of members do not attend to constitute a board, those who shall attend, may adjourn to any day previous to the next stated meeting, and shall give ten days previous notice thereof.

What number
shall constitute
a board.

Sec. 5. Seven members shall be sufficient to constitute a board for the transaction of all business respecting said seminary, excepting those cases particularly excepted.

Wherein the
assent of a ma-
jority of two-
thirds shall be
necessary,

Sec. 6. The assent of a majority of two-thirds of the trustees shall be necessary to perform the following business: to elect and fix the salary of the president, to fix on the permanent seat of the seminary, to alienate, sell and convey, any lands, tenements or rents, belonging to the seminary, to appropriate any sum exceeding one half part the amount of the funds.

Trustees to
make by-laws,
&c.

Sec. 7. The trustees shall have power from time to time, to establish such by-laws and regulations, rules and ordinances, not contrary to the constitution or laws of this state, as they shall deem necessary for the government of said academy.

Sec. 8. The trustees shall elect a president, treasurer and clerk, to their own body, and so many professors, tutors, or masters, as may be necessary ; and upon the death, resignation or legal disability of any of the trustees, president or other officers of the said academy, the board of trustees shall supply the vacancy by ballot.

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To elect certain officers.

Sec. 9. The president and officers of the academy shall have fixed and annual salaries, be subject to the direction of the board of trustees, and continue in office during good behaviour.

Officers' salaries, &c.

Sec. 10. The president of the board of trustees shall have power to call special meetings of the said trustees, and it shall be his duty upon the request of three of them, to do the same ; but upon any called meeting, ten days general notice shall be given by the president, previous to the meeting.

Power and duty of the president.

Sec. 11. If at any time, a member of the board of trustees shall absent himself from three stated meetings successively, unless for good cause shewn and approved by the said trustees, in such case, his seat shall be considered as vacant, and the board may proceed to fill his seat with a new member.

How a member may vacate his seat.

CHAPTER CXLVII.

An ACT to amend an act concerning Ferries.

Approved December 20, 1798.

See the prelection to chapter 243 of volume I.

BE it enacted by the general assembly, That it shall and may be lawful for any person applying to the county court, to establish a ferry across any water course, he or she so applying, owning the land on one or both sides of the said water course, (as the case may be,) if the court shall refuse to establish the same according to law, the person so applying, and thinking him or herself aggrieved, shall have the right to appeal to the court of appeals, and may plead matters of fact, as well as law ; any law or usage to the contrary notwithstanding.

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CHAPTER CXLVIII.

An ACT for the relief of Alexander M^cLardy.

Approved December 20, 1798.

M^cLardy, as a sergeant in the revolutionary war, was entitled to 200 acres of land, which was improvidently located and patented within Henderson's grant. This act vacates the patent; and upon his filing a relinquishment of title, and entering into bond with security, to pay all damages which may accrue from such relinquishment, permits him to withdraw his warrant, survey and patent,

CHAPTER CXLIX.

An ACT directing the Register of the Land-Office to issue certain Grants.

Approved December 20, 1798.

Preamble,

WHEREAS it is represented to the present general assembly, that there are a number of plats and certificates of land which were brought from the land-office of Virginia, and now lying in the land-office of this state, on which no grants have issued:

Register to
carry into grant
certain plats,
&c.

Provision for
obtaining from
the register of
Virginia, re-
payments of the
fees.

Caveats not to
be affected.

To commence.

Sec. 1. Therefore, *Be it enacted by the general assembly*, that the register of the land-office of this state be, and he is hereby authorised and directed, to carry the said plats and certificates into grant as early as may be, agreeably to the rules and regulations of his office; but he shall not deliver any such grant, nor a copy thereof, to the owner, proprietor, or any other person, until he receives from said owner, proprietor, or other person, an order in writing on the register of the state of Virginia, or such other person as may be directed by any law of Virginia, to return to the person who may have registered such plat and certificate of survey, the amount of the register's fees paid thereon, together with a certificate of his oath, that he hath not directly, or indirectly, received the same. Nothing in this act contained, shall be construed to affect caveats which may have been entered in the register's office in Virginia, and which are still depending in any court within this commonwealth. The register is hereby required to safely keep the said orders, until the further directions of the general assembly.

This act shall commence and be in force from the passage thereof.

CHAPTER CL.

1798.

An ACT authorising the sale of part of the real estate of Isaac Telfair, deceased, for the benefit of his Representatives.

Approved December 20, 1798.

Isaac Telfair having died, leaving some valuable Mills unfinished, and not enough personal estate to pay his debts, this act authorised his administratrix to sell 150 acres of land on Dick's river, with the unfinished Mills, and 200 acres where he had lived, and out of the money to pay his debts, and lay out the balance in military lands in Kentucky, or North West of the Ohio.

CHAPTER CLI.

An ACT to amend an act regulating proceedings in Chancery.

Approved December 20, 1798.

See the preface to Chap. 273 of Vol. I.

SECTION 1. *BE it enacted by the general assembly,* That no injunction to stay proceedings in any suit at law in a superior court, shall be granted by any inferior court, or by any judge or justice thereof.

Proceedings not to be stayed.

Sec. 2. *Be it further enacted,* That no injunction shall be granted by any court of quarter sessions, to stay proceedings in any suit at law out of their county; nor unless the said court in term time, or two of the justices during vacation, shall be satisfied of the complainant's equity contained in his bill, either by affidavit made in open court, or before one of the justices, that the allegations thereof are true, and shall order the same; in which case, the complainant or complainants, shall give bond with sufficient security, (to be approved of by the said court or justices) in the clerk's office of said court, to pay all money, or tobacco, and costs due, or to become due, to the plaintiff in the action at law, and all such costs as shall be awarded against him, her or them, in case the injunction should be dissolved.

No quarter session court to grant injunction out of their county. Mode of granting injunction in their county.

Sec. 3. *Be it further enacted,* That no injunction shall be granted by any district court, or any judge thereof, to stay the proceedings in any suit at law out of their district; nor unless the said court in term time, or one of the judges thereof in vacation, shall be satisfied of the complainant's equity contained in his bill, either by affidavit made in open court, or before the said judge, that the allegations thereof are true, and the said court or judge shall order the same; in which case the issuing

No district court to grant injunction out of their district. Mode of granting injunctions in their district.

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Previous notice
to be given the
opposite party,
in writing.

the injunction so directed, shall be stayed until the complainant shall produce a certificate from the clerk of that court wherein the proceedings in the suit at common law were had, to the clerk of the district court, that he had given bond in his office, with security approved of by the said court, or judge, for paying all money, or tobacco, and costs due, or to become due, to the plaintiff in the action at common law, and all such costs as shall be awarded against him, or her, in case the injunction shall be dissolved. And in no case shall injunctions be granted, unless the party praying the same shall give to the opposite party, or his agent or attorney at law, ten days previous notice, in writing, of the time and place of the application for said injunction. And if the plaintiff, or his attorney, do not reside in the district or county in which said judgment is obtained, or has no agent known to the defendant in said district or county, it shall then be sufficient for the defendant to leave such notice with the clerk of the court, at least ten days previous to the time appointed for his application for said injunction.

Dedimus how
to issue.

Sec. 4. *And be it further enacted*, That a judge of any court wherein a cause is depending, in which either party shall wish to take the depositions of a witness or witnesses, who may be out of the state, may order the *dedimus* to issue, upon legal notice being given of the application therefor.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CLII.

An ACT for forming a new County out of the Counties of Warren and Green.

Approved December 20, 1798.

Boundaries.

SECTION 1. *BE it enacted by the general assembly*, That all that part of the counties of Warren and Green, included in the following boundary, to wit: Beginning at the junction of Skeggs's Beaver creek and Big Barren river, to run north to Green river; thence up the same to the mouth of Little Barren river; thence up the same to the Elk Lick; thence with the Green county line four miles; thence a straight line to the Pilot Knob; thence a straight line to the mouth of the east fork of

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Little Barren river ; thence up the same till on a reduced line there shall be six miles taken from Green, by running a parallel or south line so far that a due west line from the Marrow-Bone spring will intersect the Green line ; thence with the Green line to the Tennessee state line ; thence with the same a due west course so far that a due north course will strike the beginning, shall be one distinct county, and called and known by the name of Barren. But the said county of Barren shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall be hereafter established by law. A court for the said county shall be held by the justices thereof on the fourth Tuesday in every month in which the courts of quarter sessions are not hereafter directed to be held.

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Name:

When to be represented.

County court when held.

Sec. 2. The justices to be named in the commission of the peace for the said county of Barren, shall meet at the house of Henry Rinicks, in the said county, on the first court day after the said division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall proceed to appoint and qualify a clerk, and fix on a place for holding courts in the said county, at or as near the centre thereof as the situation and convenience of the place will admit ; and thenceforth the said court shall proceed to erect the necessary public buildings at such place ; and until such buildings be completed, to appoint such place for holding courts as they shall think proper. *Provided always*, that the appointment of a place for erecting the public buildings shall not be made unless a majority of the justices of both courts of the said county shall concur therein. Each court shall appoint its own clerk, a majority of such court concurring therein ; but a majority of those present on any court day may appoint a clerk *pro tempore*.

Where & when justices to meet, and for what.

Proviso.

Sec. 3. *And be it further enacted*, That the court of quarter sessions for said county, shall be held, annually, in the months of April, June, September and February.

Q. Session court when held.

Sec. 4. It shall be lawful for the sheriffs of Warren and Green to collect and make distress for any public dues or officers' fees, which shall remain unpaid by the inha-

Power of the sheriffs of Warren & Green.

1798. bitants thereof at the time such division shall take place ;
 and shall be accountable for the same in like manner as
 if this act had not been made. And the courts of the
 Jurisdiction of the courts of said counties of Warren and Green shall have jurisdic-
 tion in all actions and suits, either in law or equity,
 which shall be depending before them at the time of such
 division, and shall try and determine the same, issue
 process and award execution thereon.
 To commence. This act shall be in force from the tenth day of May
 next.

CHAPTER CLIII.

An act concerning the Trustees of Georgetown and Wash- ington.

Approved December 20, 1798.

Georgetown trustees, vacan-
 cy how filled. SECTION 1. *BE it enacted by the general assembly,*
 That it shall and may be lawful for the county court of
 Scott to fill all vacancies that may happen by the death,
 removal, or resignation of any of the trustees of George-
 town, so that the number does not exceed the present
 number as established by law ; a majority of the justi-
 ces shall be present when the choice of a trustee shall be
 made, and the said trustees so appointed, together with
 Their powers. those who still remain to act, shall have the same pow-
 ers as the trustees heretofore had by law.

Powers of the Washington trustees respect-
 ing lots. Sec. 2. *And be it further enacted,* That the trustees
 of the town of Washington, in the county of Mason, for
 the time being, shall have full power to regulate the
 mode and manner of keeping the division fences between
 lots in the said town in repair ; and if any person or
 persons owning an in or out lot or lots in said town,
 shall refuse to keep his part of any fence or fences in
 lawful repair, agreeably to the regulations established
 by said trustees, it shall be lawful for the owner or own-
 ers of any adjoining lot or lots to repair the same, and
 may recover the expence of such repairs from the per-
 son or persons so refusing or neglecting as aforesaid, be-
 fore any justice of the peace for the said county, in pro-
 portion to each person's share of the fence so made or
 repaired.

To commence. This act shall commence and be in force from and af-
 ter the passage thereof.

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CHAPTER CLIV.

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An ACT for repairing and preserving the State-House.

Approved December 20, 1798.

SECTION 1. *BE it enacted by the general assembly;* That the governor be, and he is hereby authorised to appoint, annually, some fit and proper person as keeper of the state-house, whose duty it shall be to keep the several rooms therein clean, the window shutters closed, and the doors of such apartments locked, as are not in the actual use of the persons legally permitted to occupy the same. The said keeper shall likewise prevent, as much as may be, disorderly persons from injuring or defacing the building, and shall not suffer cattle to come within the enclosure which surrounds it. And to compensate such person for the services required by this act, the sum of fifty dollars a year is hereby appropriated, to be paid quarterly out of the public treasury.

Governor to appoint a keeper.

His duty.

Reward;

Sec. 2. *And be it further enacted,* That the governor be requested to have the chamber of the house of representatives divided, so as to afford the members seventy-five separate convenient seats, with places to write on, and that the same be completed before the first day of July next, and to cause such repairs to be made from time to time, as the situation of the building may render necessary, and likewise to appoint a person with authority to cause a well to be dug in the public square, and another on the lot whereon the governor resides; locks to be provided for the several doors, and window shutters to be made for all the rooms on the second floor.

The representative chamber to be divided, and how.

Wells to be dug in the public square and governor's lot. Locks, &c provided.

Sec. 3. *And be it further enacted,* That two small tables, half a dozen chairs, and a stove, be provided for the court room; that the governor direct the manner and situation in which the stove shall be set up; also three fenders, two for the chamber of the house of representatives, and one for the senate chamber; and to defray the expence attending these improvements and repairs, the auditor shall issue his warrant, on order from the governor, for any sum not exceeding nine hundred dollars.

Court room, &c how furnished.

Expence how paid.

This act shall commence and be in force from and after the passage thereof.

To commence.

E.

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CHAPTER CLV.

An ACT to amend the act entitled "an act establishing the Court of Appeals, and for other purposes."

Approved December 20, 1798.

Vide Vol. I. Chap. 24, and the notes.

Appellant to deliver a copy of the appeal, and when.

To be non-suited on failure thereof.

Damages on non-suit the same as when judgment is affirmed.

When appeal is not prosecuted, appellant may sue out execution.

Proceedings on mandamuses.

Duty of attorney general.

SECTION 1. *BE it enacted by the general assembly,* That when an appeal shall be granted from the judgment of any court to the court of appeals, the appellant shall deliver to the clerk of the court of appeals an authenticated copy of the record, on or before the third day of the second term of the said court after such appeal. If the appellant fail to deliver the record as aforesaid, he shall be non-suited, and his appeal dismissed; unless for good cause shewn to the court at that term, they allow him a further time to bring in the record. If further time be so allowed to the appellant, and he shall again fail to deliver the record to the clerk within the limited time, no further indulgence shall be granted; but the appeal shall be absolutely dismissed.

Sec. 2. *When an appellant shall be non-suited, or his appeal be dismissed, the court shall give the same judgment for damages and costs, as if the judgment appealed from had been affirmed.* And when an appeal shall be prayed and granted from the judgment of any court, to the court of appeals, and bond and security given in the clerk's office of such court, agreeably to the order of the said court, and the party praying such appeal, shall fail to prosecute the same within the time prescribed by this act, and pursuant to the rules prescribed by law, the appellee shall be entitled to sue out execution for the same sum and interest that he would have been entitled to, in case the appellant had prosecuted his appeal, and the judgment or decree appealed from had been affirmed in the whole.

Sec. 3. *And be it further enacted,* That in all cases of judgments or decisions of the district courts, or general court, or mandamuses, where the rights, interests, or claims of the commonwealth may be involved or implicated, it shall be the duty of the attorney-general to examine into the same, and if in his opinion, the said rights, interests or claims, are injured or impaired by the said judgments or decisions, to take an appeal therefrom to the court of appeals; which appeal, the said district

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courts, or general court, are hereby directed to grant, upon the application of the attorney-general, without requiring security from any person for the prosecution thereof.

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So much of every act or acts as comes within the purview of this act, shall be, and the same is hereby repealed.

Repealing clause.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER CLVI.

An ACT for dividing the County of Christian.

Approved December 21, 1793.

SECTION 1. *BE it enacted by the general assembly,* That all that part of the county of Christian, from and after the fifteenth day of May next, included in the following bounds, to wit: Beginning on Trade-Water, opposite the mouth of Montgomery's fork; thence to the head of Drake's creek; thence down Drake's creek to Pond river, and down the same to Green river, and down the same to the Ohio, and down the same to the mouth of Trade-Water, and up the same to the beginning, shall be one distinct county, and called and known by the name of Henderson. But the said county of Henderson shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall be hereafter established by law.

Boundaries.

Name.

When to be represented.

Sec. 2. The quarter session courts for the said county of Henderson, shall be held, annually, on the first Tuesday in the months of March, May, July and October; and the county courts for said county shall sit the same day in every other month in which the courts of quarter sessions are not herein directed to be held, in such manner as is provided by law in respect to other counties within this state.

Courts when held.

Sec. 3. The justices of the court of quarter session and county court named in the commission for said county of Henderson, shall meet at Samuel Bradley's tavern, in the town of Henderson, in the said county, on the first court day after said division takes place; and having taken the oath prescribed by law, and a sheriff being

When & where justices to meet, and for what.

1798.

Provide.

duly qualified to act, the justices of the said courts shall proceed to appoint a clerk, separately, to their respective courts, as they may severally choose to do, and to fix on a place to erect the public buildings in said county, where the courts for said county thereafter shall be held: *Provided however*, that the place for erecting the public buildings shall not be fixed on, unless a majority of the justices qualified as aforesaid, of the quarter sessions and county courts collectively, concur therein; neither shall a clerk be appointed by the justices of the said courts, unless a majority concur, or unless a majority of the justices of the court for which such clerk is to be appointed, assent thereto, (except the appointment be *pro tempore*;) but the fixing on the place for erecting the public buildings, and the appointment of a clerk, shall be postponed until such majority can be had.

Power of the-
riff of Christian

Sec. 4. It shall be lawful for the sheriff of the county of Christian to make distress for any public dues or officers' fees unpaid by the citizens within the bounds of the said county of Henderson at the time such division shall take place, and he shall be accountable in like manner as if this act had not been passed.

Jurisdiction of
Christian courts

Sec. 5. The courts of Christian county shall have jurisdiction in all actions and suits depending therein at the time of said division, and shall try and determine the same, issue process and award execution thereon.

To commence.

This act shall commence and be in force from and after the fifteenth day of May next.

CHAPTER CLVII.

An ACT concerning Public Advertisements.

Approved December 22, 1798.

WHEREAS several laws direct certain advertisements of a public nature to be published in the Kentucky Gazette and Herald only; for remedy thereof,

BE it enacted by the general assembly, That all advertisements of a public nature which shall be published in the Mirror, or Palladium, or Guardian of Freedom, or Kentucky Telegraphe, after the passage of this act, shall be as good and valid in law as if they had been published in the Kentucky Gazette or Herald; any law to the contrary notwithstanding.

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CHAPTER CLVIII.

1798.

An ACT compelling certain Sheriffs to account for Taxes received by them.

Approved December 22, 1798.

WHEREAS several of the sheriffs of the different counties in this commonwealth, who were in office in the years one thousand seven hundred and ninety-two, one thousand seven hundred and ninety-three, and one thousand seven hundred and ninety-four, have not accounted for the public taxes by them received:

Be it enacted by the general assembly, That each person who was a sheriff, deputy sheriff, or collector, during the said years, shall account with the auditor upon oath for all public taxes by him received for the said years, or either or any of them, stating particularly for what year or years the same were received, on or before the first day of September next. Every sheriff, deputy sheriff, or collector, failing to comply with this law, shall be subject to such fines, penalties, interests and damages as by any law of this commonwealth are inflicted or to be suffered or paid by a delinquent sheriff; and the same shall be recoverable in the same manner as other fines, penalties, interests or damages are by law now recoverable against sheriffs or collectors of the public revenue.

This act shall commence and be in force from the passage thereof.

CHAPTER CLIX.

An ACT for the relief of certain Sheriffs.

Approved December 22, 1798.

WHEREAS certain sheriffs within this commonwealth, have by law been required to advertise in the public newspapers, certain tracts of land lying in their respective counties, for sale, for the taxes due thereon, in which they have been put to a considerable expence; and whereas there is now no provision made by law for allowing the aforesaid sheriffs a credit for the aforesaid expences; for remedy whereof,

Be it enacted by the general assembly, That the aforesaid sheriffs shall be allowed a credit with the auditor

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for the several sums they may severally make appear to have been expended in advertising the lands aforesaid. *Provided however*, that where a sheriff has, through any inaccuracy or neglect of his own, been obliged to advertise more than once, he shall only have credit for the money paid for the last advertisement; and every sheriff shall, before he has such credit, make oath that he has neither directly or indirectly had any of the money so paid by him refunded.

This act to commence and be in force from and after the passage thereof.

CHAPTER CLX.

An ACT concerning Champarty and Maintenance.

Approved December 22, 1798.

BE it enacted by the general assembly, That no person purchasing or procuring an interest in any legal or equitable claim to land held under the land laws of Virginia, now the laws of this state, shall be precluded from prosecuting or defending said claim under such purchase or contract, neither shall any suit or suits brought to establish such purchase, or make good the title to such claim, be considered as coming within the provisions, either at common law or by statute, against champarty or maintenance, any law to the contrary notwithstanding.

This act shall commence and be in force from the passage thereof.

CHAPTER CLXI.

An ACT remitting one half the Taxes collected in the year 1799.

Approved December 22, 1798.

BE it enacted by the general assembly, That one half of the taxes to be collected in the year one thousand seven hundred and ninety-nine, (all arrearages excepted,) shall be, and the same are hereby remitted; any law or laws to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXII.

1798.

An ACT directing an Enumeration to be made of the free male Inhabitants within this Commonwealth, above the age of twenty-one years.

Approved December 22, 1798.

SECTION 1. *BE it enacted by the general assembly,* Enumeration to be made.
That an enumeration shall be made of the free male inhabitants of this commonwealth, above the age of twenty-one years, to enable the legislature, at their next session, to apportion representation among the several counties, agreeably to the sixth section of the first article of the constitution.

The commissioners of the tax in their respective counties and districts, when taking lists of the taxable property, in the year one thousand seven hundred and ninety-nine, which they are hereby directed to do, agreeably to the revenue laws of this state, shall have a column in their books, in which they shall note all the free male inhabitants above twenty-one years of age; and the auditor shall, at as early a period as possible, report to the general assembly, the number of free male inhabitants above twenty-one years of age. When, how, &c by whom.

Sec. 2. *Be it further enacted,* Provision in case of a new county.
That where a new county is erected, and does not take place so as to have commissioners of the tax appointed, it shall be the duty of the commissioners of the tax of the county or counties from which said new county may be taken, to take four separate lists for said new county, or such parts thereof as may fall within their bounds; one copy of which shall be returned to the clerk of the court of said new county, and another returned to the auditor.

CHAPTER CLXIII.

An ACT for establishing a Ferry from the lands of Elijah Craig, across the Kentucky River, to the opposite Shore.

Approved December 22, 1798.

WHEREAS it is represented to the present general assembly, that great convenience will accrue to the people, by establishing a ferry across the Kentucky river, at the rope-walks, one mile above the town of Frankfort; therefore, Preamble.

1798.
A new ferry
established.

Sec. 1. *Be it enacted*, That a public ferry shall, from and after the passage of this act, be kept at the aforesaid rope-walks, from the lands of Elijah Craig, across the said river, to the opposite shore.

Provisions re-
specting ferry
boat, rates of
ferriage, &c.

Sec. 2. *And be it further enacted*, That the said Elijah Craig shall, from and after the first day of May next, furnish and keep in good repair, a sufficient boat for the safe conveyance of persons and property across the aforesaid river, and shall be entitled to the same rates, and subject to the same fines and penalties, and under the same regulations, that the owner of the ferry is subject to from the town of Frankfort to the opposite shore.

East Frankfort
inspection esta-
blished.

Sec. 3. *And be it further enacted*, That an inspection of hemp and flour is hereby established at the ferry of the aforesaid Craig, which shall be called and known by the name of East Frankfort. And the inspectors of hemp and flour in the town of Frankfort, are hereby authorised and required to attend, whenever it may be necessary, at the said East Frankfort inspection, and inspect all the flour and hemp which may be there deposited; for which they shall receive the same compensation as is now allowed them by law, for like services rendered at the Frankfort inspection.

This act shall commence and be in force from the pas-
To commence, sage thereof.

CHAPTER CLXIV.

*An ACT for altering the time of holding Courts in Jef-
ferson.*

Approved December 22, 1798.

BE it enacted by the general assembly, That the court of quarter sessions for the county of Jefferson, shall hereafter be held on the fourth Tuesday in April in every year, instead of the first Tuesday.

This act shall be in force from its passage.

CHAPTER CLXV.

An ACT to amend an act entitled "an act to reduce into one the several acts for establishing District Courts in this Commonwealth."

Approved December 22, 1798.

Rules in plead-
ing set-off.

SECTION 1. *BE it enacted by the general assembly*, That the same rules shall be observed in the district courts of

this commonwealth with respect to pleading set-offs, and giving them in evidence, that are established by law in the courts of quarter sessions. 1798.

Sec. 2. *And be it further enacted*, That the district court now composed of the counties of Jefferson, Nelson, Washington, Hardin, Green and Logan, shall be divided, and that that part of the district which at the commencement of this session of assembly, was within the counties of Logan, Christian and Warren, shall be a separate district; and a court for the said district shall be held at the court-house of Logan county, for and during the term of two years, on the fourth Mondays in the months of May and October; and the court-house and jail of Logan county, shall be used as the court-house and jail of the said district, while the court shall continue to sit at the court-house of the said county; and the said court shall have the same jurisdiction of all causes at law and in equity, arising within the said district, as other district courts have in their respective districts, and shall be governed, as to the forms and returns of writs, process and proceedings depending therein, and also in the adjournment of questions to the general meeting of the judges, by the same rules and regulations as are prescribed by law to the said courts. The said court hereby established, shall appoint a clerk, who shall receive such fees for his services, to be recovered in like manner, as the clerks of other district courts. The allotment of judges to the said district, shall be made at the same time, and in the same manner as they are made to other districts. Nothing in this act contained shall be construed to give jurisdiction to the court hereby established, over any matter or thing relative to which process shall have been issued from the district court held at Bairdstown, prior to the time this act shall take effect.

New district laid off.
And a court to be held therein; when & where?
Its jurisdiction.
And rules of proceeding.
Clerk to be appointed.
And judges allotted for the new court.
Not to have jurisdiction of causes begun in the Bairdstown district.

And whereas additional labor and expence is hereby imposed on the judges of the district courts:

Sec. 2. *Be it further enacted*, That the said judges shall receive each an addition of thirty pounds to his present salary.

Judges' salary increased.

This act shall commence and be in force from and after the passage thereof.

To commence.

1798.

CHAPTER CLXVI.

An ACT for the Union of the Transylvania Seminary and Kentucky Academy.

Approved December 21, 1798.

Preamble.

WHEREAS a majority of the trustees of the Transylvania Seminary and of the Kentucky Academy, have, by their joint petition, represented to this general assembly, that the boards of trustees of the said seminary and academy, have mutually agreed, that those institutions and their respective funds, shall be united, on the terms therein set forth ; and requested that the said union may be confirmed by the legislature : therefore, in conformity to the said terms, and in compliance with the said request,

When united.

Sec. 1. *Be it enacted by the general assembly,* That from and after the first day of January next, the Transylvania Seminary, and the Kentucky Academy, shall be united, and become one general institution for the promotion of learning, to be stiled and known by the name of the Transylvania University ; and that James Garrard, Samuel M'Dowell, Cornelius Beatty, Frederick Ridgeley, Robert Marshall, George Nicholas, James Crawford, Joseph Crockett, Bartlett Collins, Andrew M'Calla, William Morton, Robert Steel, John M'Dowell, Alexander Parker, Caleb Wallace, James Trotter, Levi Todd, James Blythe, Thomas Lewis, John Bradford and Buckner Thruston, shall be the trustees of the said University, and shall hold their first session at the seat of the said Transylvania Seminary, in the town of Lexington, on the second Tuesday in January next.

How called, and names of the trustees.

When to hold their first session.

Trustees to be a body politic and incorporate. Their powers.

Former contracts to be fulfilled.

Sec. 2. *And be it further enacted,* That the said twenty-one trustees, and their successors, by the name of the trustees of the Transylvania University, shall be a body politic and incorporate, and as such, possess, hold, or dispose of, for the use and benefit of the said university, all the lands, monies and property of every other kind which shall be in the occupation of, or in any wise accruing to the trustees of the said Transylvania seminary and the Kentucky academy, or either of them, under the several laws by which those trustees shall respectively be entitled thereto, on the said first day of January next ; and that all contracts made by either of the said last mentioned boards of trustees, or their respective agents

prior thereto, shall be fulfilled by, or accrue to the trustees of the said university.

1798.

Sec. 3. *And be it further enacted*, That the said seat of the Transylvania seminary, shall be the seat of the said university, until removed by a board of the trustees thereof, two-thirds of the whole number of the trustees at the time being, concurring in the expediency of the measure; and on the concurrence of the same number, they may, from time to time, establish at the seat of the said university, or elsewhere, one or more schools, as nurseries for the said university.

The seat of the University.

Two-thirds of the trustees may remove it. May establish one or more schools.

Sec. 4. *And be it further enacted*, That the trustees of the said university may, from time to time, expend so much of the funds thereof, as they shall think proper, to assist poor and promising youths in acquiring education therein, or in the schools belonging thereto; eleven of the trustees concurring in the election of each youth thus to be assisted, and in fixing the several sums of money to be advanced for the purpose.

Further powers of the trustees respecting the election of youths.

Sec. 5. *And be it further enacted*, That the several acts of the general assembly of the state of Virginia and Kentucky, now in force, prescribing the powers and directing the proceedings of the trustees of the said Transylvania seminary, shall be the laws of the trustees of the said university, until amended or repealed by the legislature, on petitions of the trustees of the said university, signed by at least eleven of them: except that no trustee of the said university shall continue in office after having absented himself from one stated session of the trustees thereof, and the first day of their stated session next following, and also from the intermediate session or sessions, if any, which shall be legally appointed or called, unless on the next day thereafter on which a board shall meet, and before it enters on any other business, it shall receive satisfactory information, that the causes of such absence were sufficient, and also that they are removed; otherwise, the seat of the trustee thus absenting himself, shall be considered as vacated, and a record be made thereof. Except, also, that in all those cases wherein by the last mentioned acts, the concurrence of thirteen trustees is made requisite, only eleven of the trustees of the said university shall be requisite to constitute a quorum to do such business, and the concurrence of eleven shall be sufficient. Except, also, that any

Former laws respecting the Seminary and Academy, when to be amended or repealed.

Exception as to members absenting.

As to the number constituting a quorum.

1798. board of the trustees of the said university may appoint and empower committees to determine any business during the recesses of the trustees, which might have been done by a board, consisting only of seven of the said trustees: and except, also, that the trustees of the said university shall have power, as often as they shall think proper, to make temporary appointments of a president, treasurer and clerk, and professors and masters.

As to appointing committees to do business during recess. And as to temporary appointments,

CHAPTER CLXVII.

An ACT to amend an act entitled "an act to reduce into one, the several acts concerning Elections."

Approved December 22, 1798.

See the observations on Chap. 6, of Vol. I.

BE it enacted by the general assembly, That the election for representatives for this commonwealth, in the congress of the United States, shall commence on the first Tuesday in May next, whose duties shall also commence immediately succeeding such election; any law to the contrary notwithstanding.

CHAPTER CLXVIII.

An ACT authorising the sale of part of the estate of William Montgomery, deceased.

Approved December 22, 1798.

This act authorises Thomas Montgomery to sell part of the lands of William Montgomery, deceased, to pay his debts, and complete his title to other lands.

CHAPTER CLXIX.

An ACT to extend the right of Peremptory Challenge in Criminal Cases.

Approved December 22, 1798.

See the prælection to Chap. 262, of Vol. I.

BE it enacted by the general assembly, That the same right of peremptory challenge which now exists in cases that are capital, (except treason,) is hereby extended to all criminal cases whatsoever. The provisions of this act shall extend to all courts within this commonwealth having jurisdiction of such cases, except the courts of quarter sessions.

This act shall be in force from the passage thereof.

CHAPTER CLXX.

1798.

An ACT to disable all persons holding any office or appointment under the General Government, from holding any office or appointment under the authority of this State.

Approved December 22, 1798.

Vide Vol. I, Chap. 40, and the notes.

WHEREAS it is deemed necessary more effectually Preamble, to provide against the citizens of this commonwealth holding or exercising any office or appointment under the authority of the federal government, from holding or exercising any office or appointment under the authority of this commonwealth :

Sec. 1. *Be it therefore enacted by the general assembly,* That if any person or persons shall hold any office or appointment under the authority of the federal government, he or they shall be incapable of holding or exercising any office or appointment under the authority of this commonwealth ; and if any person or persons holding or exercising any office or appointment under the authority of the general government, and at the same time shall hold or exercise any office or appointment under the authority of this state, he shall forfeit and pay, for every month so offending, the sum of ten dollars, to any person or persons who will sue for the same, by action of debt or information, in any court of record within this commonwealth, having competent jurisdiction thereof. It shall be the duty of the grand juries that may be empannelled in any court of quarter sessions or district court within this commonwealth, to present any person who shall be guilty of the offence aforesaid ; whereupon, if he shall be found guilty, he shall forfeit and pay fifty dollars to the use of this commonwealth. No person holding office under the general government, shall hold an office under this state. Under ten dollars penalty per month. Grand juries to present such offences.

CHAPTER CLXXI.

An ACT for establishing the Bourbon Academy.

Approved December 22, 1798.

SECTION 1. *BE it enacted by the general assembly,* Trustees, That William Garrard, David Purviance, Augustine Eastin, John Edwards, Andrew Todd, John Allen, William Kelly, Thomas Jones, sen. Hugh Brent, John Metcalfe, Alexander Barnett, James Brown, sen. Barton

1798.

Their power.

W. Stone, James Matson and James Kinney, shall be, and they are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Bourbon Academy, and by that name shall have perpetual succession, and a common seal, with the power to change the same at pleasure, and as such shall be authorised to exercise all powers and privileges that are enjoyed by trustees, visitors and governors of any college or university within this state, not herein limited or otherwise directed.

First meeting
where held and
for what.

Sec. 2. The said trustees shall hold their first stated session at the town of Paris, in the county of Bourbon, on the first Monday in April next, and they, or a majority of them, shall then, or as soon as they think proper, fix upon a place for a permanent seat for said academy, and proceed to erect buildings thereon; and until suitable buildings and regulations are made at such place, they may commence and proceed in the institution at any other place they shall judge proper.

Further powers
of the trustees.

Sec. 3. The said trustees, or their successors, by the name aforesaid, shall be capable in law, to purchase, receive and hold, to them and their successors, for the use and benefit of said academy, any lands, tenements and rents, goods and chattels, of what kind soever, which shall be given or devised to, or purchased by them, for the use of said seminary; and also to demand and receive from the collectors, or other persons appointed by the original subscribers to this institution, such sums of money, or property, as may be collected or subscribed for, from the said subscribers.

Donation.

Sec. 4. No donation given or received for the use of this seminary, shall be appropriated to the use of any other seminary.

Trustees may
sue or be sued.

Sec. 5. The said trustees, by the name aforesaid, may sue or be sued, plead or be impleaded, in any court of law or equity within this state.

To hold two
meetings annually.

Sec. 6. The said trustees shall hold two stated sessions in each year, at such time and place as they shall judge proper; and in case a sufficient number of members do not attend to constitute a board, those who shall attend may adjourn to any day previous to the next stated meeting, and shall give ten days previous notice thereof.

Sec. 7. Seven members shall be sufficient to constitute a board for the transaction of all business respecting the said seminary, excepting those cases particularly excepted. ^{1798.} ^{What number to constitute a board.}

Sec. 8. The assent of a majority of the whole number of trustees shall be necessary to perform the following business : To elect and fix the salary of the president ; to fix on the permanent seat of the seminary ; to alienate, sell or convey, any lands, tenements or rents belonging to the seminary ; to appropriate any sum exceeding one half part the amount of the funds. ^{Particular cases excepted.}

Sec. 9. The trustees shall have power, from time to time, to establish such by-laws and regulations, rules and ordinances, not contrary to the constitution or laws of this commonwealth, as they shall deem necessary for the government of said academy. ^{Further powers of the trustees as to rules, &c.}

Sec. 10. The trustees shall elect a president, treasurer and clerk, to their own body, and so many professors, tutors, or masters, as may be necessary ; and upon the death, resignation, or legal disability of any of the trustees, president, or other officers of the said academy, the board of trustees shall supply the vacancy by ballot. ^{As to appointments.}

Sec. 11. The president and officers of the academy, shall have fixed and annual salaries, be subject to the direction of the board of trustees, and continue in office during good behaviour. ^{Officers to have fixed salaries.}

Sec. 12. The president of the board of trustees shall have power to call special meetings of the said trustees, and it shall be his duty upon the request of three of them, to do the same. But upon any called meeting, ten days general notice shall be given by the president previous to the meeting. ^{President to call special meetings.}

Sec. 13. If at any time, a member of the board of trustees shall absent himself from three stated meetings successively, unless for good cause shewn, and approved of by the said trustees, in such case, his seat shall be considered as vacant, and the board may proceed to fill his seat with a new member. ^{Seat of trustees when vacated.}

It shall be the duty of the trustees to preserve inviolate, the following fundamental articles :

1st. As the extension of useful knowledge is the only object contemplated by this institution, no preference shall be given in the choice of trustees, president, or teacher, on account of religious sentiments. ^{No preference for religious sentiments.}

1798. 2nd. No law, regulation, or ordinance, shall be enforced by said trustees, nor attempts made by the president, professors, tutors, or masters, which is, or shall be calculated to give a bias in religion, to the minds of the rising youth: the present principles of morality, unconnected with party or profession, ought to be the only impressions, united with science, that a teacher should attempt to plant in the youthful mind: *Provided however*, that the trustees of the said academy, shall at all times, be accountable for their conduct in the management of the business aforesaid, in such manner as the legislature shall by law direct.

What prohibited and what taught.

Provide.

—:~::~~::~~:—

CHAPTER CLXXII.

An ACT to establish and endow certain Academies.

Approved December 22, 1798.

SECTION 1. *BE it enacted by the general assembly,*

Trustees of That William Kennedy, Washington Berry, Charles Morgan, John Grant, Thomas Kennedy, Thomas Sanford, Thomas Carneel, Richard Southgate, Daniel Mayo, John Crittenden, Robert Stubbs and James Taylor, shall be, and are hereby constituted a body politic and incorporate, and shall be known by the name of the trustees of the Newport Academy.

Harrodsburg academy. That Samuel Taylor, John Adair, Philip Bush, Gabriel Slaughter, George Thompson, Matthias Bush, George Bohannon, Peter Casey, Samuel P. Duval, Peter Bonta, John Thomas and Augustine Passmore, shall be, and are hereby constituted a body politic and incorporate, and shall be known by the name of the trustees of the Harrodsburg Academy.

Stanford academy. That Nathan Huston, Hugh Logan, Richard Gains, George Davidson, Samuel Finly, William Owsley, Samuel Moore, Jonathan Forbes and John James, shall be, and are hereby constituted a body politic and incorporate, and shall be known by the name of the trustees of the Stanford Academy.

Rittenhouse academy. That Robert Johnston, Bartlett Collins, John Hawkins, John Hunter, Elijah Craig, Toliver Craig, William Henry, John Payne, Samuel Shepherd, William Warren and Abraham Buford, shall be, and are hereby constituted a body politic and incorporate, and shall be

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known by the name of the trustees of the Rittenhouse Academy.

1798.

That Samuel Hopkins, Charles Davis, William Campbell, Robert Ewing, John Curd, Israel M'Grady, Amos Balsh, Young Ewing, David Caldwell, William Prince, William Love, Finis Cox, Burwell Jackson, Acneas M'Collister, Samuel Hardin, John Bailey, Daniel Brown, and John Caldwell, shall be, and they are hereby constituted a body politic and incorporate, and shall be called and known by the name of the trustees of the Newton Academy.

Newton academy.

That Enoch Smith, James Pogue, Jilson Payne, Bennet Clark, Joseph Hume, William Payne, Abijah Brooks, James Ward, William Robinson, and James M'Ilany, shall be, and are hereby constituted a body politic and incorporate, and known by the name of the trustees of the Montgomery Academy.

Montgomery academy.

That Benjamin Harrison, William E. Boswell, Henry Coleman, Hugh Miller, sen. John Wall, Samuel Lamb, Samuel M'Mullin, Samuel Cook, and Robert Hingson, shall be, and are hereby constituted a body politic and incorporate, and known by the name of the trustees of the Harrison Academy.

Harrison academy.

That Michael Cassidy, Robert Morrison, John Hart, Hugh Fulton, George Stockden, Andrew Kincaid, John Home, John Faris, and Richard Tilton, shall be, and are hereby constituted a body politic and incorporate, and known by the name of the trustees of the Fleming Academy.

Fleming academy.

That Joseph Hornsby, Benjamin Logan, Bland W. Ballard, Benjamin Roberts, Thomas Given, Simon Adams, James Logan, John Allen, Joseph Winlock, John Pope, Nicholas Merewether, Daniel M'Cleland, and Aquilla Whitaker, shall be, and are hereby constituted a body politic and incorporate, and known by the name of the trustees of the Shelby Academy.

Shelby academy.

That Hickerson Grubbs, Robert Caldwell, Green Clay, Christopher Irwin, Archibald Wood, James Speed, Matthew Huston, Joseph Kennedy, James Barnett, Robert Rhodes, John Millar, and John Patrick, shall be, and are hereby constituted a body politic and incorporate, and known by the name of the trustees of the Madison Academy.

Madison academy.

1793. That William Casey, Robert Haskins, Elias Barbee,
 {
 New Athens Jonathan Conard, William Buckner, Jonathan Patterson,
 academy. son, Nathan Montgomery, John W. Sample, James
 Young, Daniel Trabue, John Montgomery, and David
 Sims, shall be, and are hereby constituted a body politic
 and incorporate, and known by the name of the trustees
 of the New Athens Academy.

That Philip Buckner, Nathaniel Patterson, Samuel
 Bracken academy. Brooks, William Brock, John Blanchard, Francis Wells,
 Robert Davis, John Bond, John Fee, John Pattie, and
 Joseph Logan, shall be, and are hereby constituted a
 body politic and incorporate, and known by the name
 of the trustees of the Bracken Academy.

That Felix Grundy, Matthew Walton, Benjamin
 Washington academy. Hardin, Thomas Kyle, Samuel Overton, John Helm,
 John Reed, Barnabas M'Henry, John Lancaster, Philip
 Washburn, Henry Smock, Robert Able, Charles Ew-
 ing, and Charles Wickliff, shall be, and are hereby con-
 stituted a body politic and incorporate, and known by
 the name of the trustees of the Washington Academy.

That Alexander Barnet, Ignatius Pigman, Joshua
 Hartford academy. Crow, William Bailey Smith, Benjamin Fields, Jesse
 Cravens, Harrison Taylor, Stephen Clever, Aquilla
 Fields, and David Glenn, shall be, and are constituted
 a body politic and incorporate, and known by the name
 of the trustees of the Hartford Academy.

That William Garrard, John Allen, William Kelly,
 Bourbon academy. David Purviance, Augustine Eastin, John Edwards,
 Andrew Todd, Thomas Jones, sen. Hugh Brent, John
 Metcalf, Alexander Barnett, James Brown, sen. Bar-
 ton W. Stone, James Matson, and James Kenny, shall
 be, and they are hereby constituted a body politic and
 incorporate, to be known by the name of the trustees of
 the Bourbon Academy.

That Benjamin Perkins, John Harrison, James
 Lancaster academy. Thompson, John Bryant, Samuel Gill, Henry Pawling,
 Benjamin Letcher, William Bledsoe, John Jones, John
 Boyle, jun. and William Campbell, shall be, and they
 are hereby constituted a body politic and incorporate,
 and called and known by the name of the trustees of the
 Lancaster Academy.

That John Paul, Thomas Helm, John Vantreesse,
 Hardin academy. Benjamin Helm, John Canihaw, sen. Bladen Ashby,
 Robert Hodgins, Patrick Brown, Stephen Roling, and

Jacob Larue, be, and they are hereby constituted a body politic and incorporate, and shall be called and known by the name of the trustees for the Hardin Academy; and they, or a majority thereof, shall fix upon a proper seat for the same.

1793.

Seat of, how
fixed upon.

That Henry Crist, Benjamin Summers, Benjamin Pope, Daniel Donaldson, Samuel Crow, Richard Summers, Joseph Saunders, John Lewis, Thomas Speed, Armstead Morehead, and Thomas Greenfield, be, and they are hereby constituted a body politic and incorporate, and shall be called and known by the name of the trustees of the Bullitt Academy; and they, or a majority thereof, shall fix upon a seat for the same.

Trustees of
Bullitt acade-
my.

Seat of, how
fixed upon.

That Caleb Wallace, Robert Alexander, George Brooke, William Vawter, William Steele, John Watkins, Marquis Calmes, Richard Young, John Joutte, Charles Wilkins, Tunstall Quarles, John O'Bannon, and Alexander Dunlap, be, and they are hereby constituted a body politic and incorporate, and shall be called and known by the name of the trustees of the Woodford Academy; and they, or a majority of them, shall fix upon the seat for the same.

Trustees of
Woodford aca-
demy.

How and where
fixed.

That the trustees of the said several academies, shall each have perpetual succession, and a common seal, and are hereby severally invested with all the powers and privileges that are enjoyed by the trustees of any academy or college within this commonwealth, not herein otherwise limited or directed.

Academies,
succession, seal,
powers and pri-
vileges of.

The permanent seat for the Harrodsburgh academy, shall be established on the public square, in the town of Harrodsburgh, containing fifteen acres, which is hereby vested in the trustees thereof, and their successors, who are empowered to sell any part thereof, not exceeding thirteen acres, and appropriate the money arising therefrom, towards erecting buildings for the said academy on the remaining part.

Harrodsburg aca-
demy, where
to be fixed.

Powers and du-
ty of the trust-
tees thereof.

The seat for the Stanford academy, shall be established in the county of Lincoln, at or near the town of Stanford, as the trustees, or a majority of them, may judge most eligible; which seat, when so fixed on, shall be considered as the permanent seat of the same, and shall be vested in the said trustees and their successors, for the use of said academy. The seat for the Newport academy shall be established on the open square in the

Stanford acade-
my where to be
fixed.

Powers of the
trustees.

Newport aca-
demy, where to
be fixed, and
powers of the
trustees thereof.

1798. town of Newport, containing six in-lots, and which is hereby vested in the trustees thereof, and their successors, for the use of the said academy. The seat for the Hartford academy, shall be established in the town of Hartford, or in the vicinity thereof, as may be judged best by the trustees thereof. The seat for the Newton academy, shall be established at the most convenient eligible place in the opinion of the trustees thereof, within the counties of Logan, Warren or Christian, or such counties as may be formed of them; which place, when so fixed on, shall be deemed the permanent seat of the said academy. The seats for the Rittenhouse, the Montgomery, the Harrison, the Fleming, the Bracken, the Madison, the Shelby, the Washington and the New Athens academies, shall be fixed by the trustees of the said several academies, respectively, at such place within their respective counties as they may deem most proper and eligible; which places, when so fixed, shall be established as the permanent seats of the said several academies.
- Hartford academy, where and how fixed.
- Newton academy, where and how fixed.
- The Rittenhouse, Montgomery, Harrison, Fleming, Bracken, Madison, Shelby, Washington & New Athens academies, where and how to be fixed.
- Sec. 2. There shall be granted to the said several trustees, and their successors, for the use of the said academies, and to the trustees of the Winchester academy, six thousand acres each, of vacant land, to be located on the south side of Green river, including those on the south side of Cumberland, reserved by an act of the last session [for seminaries, upon the same terms and conditions as lands were granted to other seminaries in this state, by an act of the last session*] of the general assembly, entitled "an act for the endowment of certain seminaries of learning, and for other purposes." *Provided*, that no entry or survey made in pursuance of this act, shall interfere with, or include any actual settlement now made, with two hundred acres of land, including the improvement in the centre thereof. The lands hereby intended to be granted to the said several academies, nor any part of them, shall ever be sold or alienated by the said trustees, or their successors; nor shall they ever be leased for a longer period, at one time, than twenty-one years; and in all leases, or other temporary dispositions of the said lands, two-thirds of the whole number of the trustees of the said academy, shall concur. In fixing the seats for the several academies, which are left to the judgment of the trustees by this act, there shall
- Endowments of land to the several academies. Where to be located.
- (*The lines included thus [] were omitted in the roll by mistake.)
- Proviso.
- The lands so granted not to be sold nor leased for more than 21 years.
- Two thirds of trustees must concur in all dispositions of the land, and for fixing on the several seats for the academies.

also be a concurrence of two-thirds of all the trustees for said academy.

1798.

The trustees of the said several academies are hereby authorised to raise by lottery, and also by subscription, any sum not exceeding one thousand dollars each, for the purpose of enabling them to erect buildings, to purchase books or the necessary apparatus for an academy, or to enable them to defray the expences necessary in securing the several donations of land hereby granted to them. It shall be left wholly in the discretion of the said several trustees, what subjects shall be taught in the said several academies, whether the English language, writing, arithmetic, mathematics and geometry only, or the dead and foreign languages and the other sciences which are generally taught in other academies or colleges in this commonwealth. If the said trustees, or their successors, do not, within ten years from the passage of this act, severally establish a public school, consisting of at least twelve scholars, and in which there shall be at least taught the English language, writing, arithmetic, and the common branches of the mathematics, the lands acquired in virtue of this act, by the said trustees so failing, shall revert to this commonwealth.

Trustees may raise money by lottery, and how to be appropriated.

The trustees to direct what subjects shall be taught in the several academies.

Schools when to be established.

Lands to revert to the commonwealth.

A majority of the said several trustees shall be sufficient to make a board and transact all ordinary business. They, or a majority of them, shall, from time to time, fill up any vacancies which may happen, and shall in all respects whatever, so far as the cases will apply, and is not otherwise in this act directed, be governed by the same rules and regulations as are prescribed by the Bethel academy:

What number to make a quorum.

How vacancies filled, and how governed.

Sec. 3. *And be it further enacted*, That the several county courts for the several counties within this commonwealth in which seminaries have not been established by this or any former act, shall be, and are hereby authorised to have located, surveyed and patented, within the bounds herein before prescribed, six thousand acres of any waste and unappropriated land, for the use of such schools as may hereafter be established within either of the said counties, under the like rules and regulations as trustees are by this act governed.

Court of each county wherein no academy has before been established, may locate lands for a seminary.

The further time of eighteen months is hereby allowed to the several academies which was granted six thousand acres of land each, by an act of the general assem-

Further time given to survey and register lands.

1798. bly, passed on the tenth day of February last, and who
 } have not obtained their lands, to survey and register the
 same. *Provided always*, that the several grants and
Provis. appropriations of land herein made, shall be subject to
 any future order of the legislature; but no act shall be
 passed to impair any contract which may be made by the
 trustees of any of the seminaries established by this act,
 by virtue of the powers herein delegated to them. *And*
provided always, that the donations herein made, shall
 forever continue appropriated to the use of seminaries.
To commence. This act shall commence and be in force from and af-
 ter the passage thereof.

CHAPTER CLXXIII.

An ACT concerning the Militia.

Approved December 22, 1798.

See the observations on Chap. 17, of Vol. I.

CHAPTER CLXXIV.

An ACT to reduce into one the several acts for the better regulating and collecting certain Officers' Fees.

Approved December 22, 1798.

SECTION 1. *BE it enacted by the general assembly*,
 That it shall and may be lawful for the register, the
 clerk of the court of appeals, clerks of the district courts,
 courts of quarter sessions, and county courts, justices of
 the peace, sheriffs, coroners, constables and surveyors,
 to demand, receive and take, the several fees herein after
 mentioned, for any business by them respectively done,
 by virtue of their several offices, and no other fees what-
 soever—that is to say :

Sec. 2. TO THE REGISTER,

		DOL.	Cts.
Register's fees.	For receiving a plat and certificate, record- ing the same and issuing the grant, where the survey does not exceed four hundred acres,	1	12 1-2
	For every 100 acres exceeding 400 included in the same,	12	1-2
	Entering a caveat, or for a copy thereof,	25	

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	DOL. CTS.	1798.
For a copy of any grant or patent of land,	43	<u> </u>
a search for any thing, and for reading		
the same, if a copy be not required,	12 1-2	
a copy of a plat and certificate, -	25	
a copy of a warrant, with the assignment		
thereon, - - -	17	
a copy of a warrant, - - -	12 1-2	

Sec. 3. TO THE SURVEYOR,

For every survey by him plainly bounded as the law directs, and for a plat of such sur- vey upon the delivery of such plat, where the survey shall not exceed four hundred acres, - - -	4	Surveyor's fees
For every hundred acres contained in one survey, more than 400 acres, -	25	
For surveying a lot in town, -	50	
And where the surveyor shall be stopped or hindered from finishing a survey by him begun, to be paid by the party who requi- red the survey to be made, -	2 50	
For running a dividing line, -	2 0	
For surveying an acre of land for a mill, -	2 0	
For every survey of land formerly patented, and which shall be required to be survey- ed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed. And where a survey shall be made of any lands which are to be added to other lands in an inclusive patent, the surveyor shall not be paid a second fee for the land first surveyed, but shall only receive what the survey of the additional land shall amount to.		
And where any surveys shall have been ac- tually made of several parcels of land ad- joining, and several plats delivered, if the party shall desire one inclusive plat there- of, the surveyor shall make out such plat and shall receive for every survey therein included, - - -	25	
For running a dividing line between any counties, to be paid by the new county, and		

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Dol. Crs.

run by the surveyor thereof, if ten miles or under, when reduced to a straight line,	10 41
And for every mile above ten from the beginning,	31
For receiving a warrant of survey, and giving a receipt therefor,	17
For recording a certificate from the commissioners of any district, of a claim to land allowed by them, to be paid by the claimant,	17
For making an entry for land, or for a copy thereof,	17
For a copy of a plat of land, and the certificate of survey,	25
Every surveyor shall be entitled, for every connected plat he shall originally make out with notes of reference thereto, to	1
And for each plat therein contained, over and above his services performed on the ground,	9
And each surveyor shall record, in a book to be by him kept for that purpose, all connections of surveys which he shall officially make out ; and for a copy of any connected plat from the records in his office, with notes of reference thereon, where the number of plats shall not exceed four, he shall be entitled, for each plat, to	25
And for each plat therein contained exceeding four, he shall be entitled to	4 1-2

Assignee liable
for surveyor's
fees.

Provided always, and be it further enacted, That where any person shall employ a surveyor, and shall have received a plat of the land surveyed, and afterwards shall assign the land to any other, either before or after obtaining a patent for the same, if such person for whom the land was first surveyed, shall not have paid for the said survey, it shall and may be lawful for the sheriff of the county wherein such assignee shall reside, at the instance of such surveyor, to make distress upon the slaves, goods, and chattels of such assignee, in like manner as herein after provided for surveyors, or other officers' fees, refused or delayed to be paid.

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Sec. 4. TO THE CLERK OF THE COURT OF APPEALS.

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	Dol.	Cts.	
For every writ or <i>dedimus</i> or <i>potestatem</i> ,	37	1-2	Clerk of the court of appeals fees.
taking bond on issuing <i>supersedeas</i> ,	43		
entering the appearance of either party, in person or by attorney,	16		
every rule entered on the rule docket,	16		
a copy of every rule,	16		
entering every continuance on the court docket,	25		
administering an oath or affirmation in court,	16		
entering every judgment,	25		
copy thereof,	16		
entering every decree,	50		
copy of the same, for every 20 words,	2		
filing the record upon an appeal, writ of error, or <i>supersedeas</i> ,	25		
a copy of such record, for every 20 words,	2		
taxing the costs in any action or suit, and a copy thereof,	35		
every order to a witness for attendance, to be charged to the party against whom such order goes,	16		
a copy thereof,	16		
an attachment thereon,	16		
every order in court,	25		
recording a deed where one tract of land only, is conveyed, taking the acknowledgment or proof thereof, and certifying the same,	1		
and for every tract more than one, contained in such deed,	25		
recording each certificate annexed to, or endorsed on such deed, when offered to be recorded,	16		
a copy of any deed, three-fourths of the fee for recording the same,			
recording a deed concerning slaves or personal matters only,	1		
copy thereof,	75		
recording a letter of attorney,	75		
copy thereof,	50		

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1798.		Dol. Cts.
{	For recording a bond with condition, other	
	than for the performance of covenants,	75
	a copy of a bond with condition, -	50
	a search for any thing above a year's stand-	
	ing, and reading the same, or any part	
	thereof, if required, -	16
	docketing any cause, to be charged but	
	once, - - - - -	16
For services not	For every other service of the clerk of the	
enumerated.	court of appeals, a reasonable compensa-	
	tion shall be made by the party, to be de-	
	termined by the court of appeals, according	
	to the nature and equity of the case, hav-	
	ing regard to the fees herein allowed.	
	For the examination of any person desirous	
	of obtaining a certificate of qualification	
	for the office of clerk to any court, and	
	certifying same, if required, to be charged	
	but once, - - - - -	4
Sec. 5. TO THE CLERKS OF THE DISTRICT AND		
QUARTER SESSION COURTS.		
		Dol. Cts.
Fees of clerks	For every writ other than those hereinafter	
of district and	particularly specified, with the endorse-	
quarter session	ment, - - - - -	25
courts.	a copy thereof, - - - - -	15
	entering the sheriff's return, or for a copy	
	thereof, - - - - -	12 1-2
	a copy of a bail bond, - - - - -	25
	docketing every cause to be charged but	
	once, - - - - -	8
	entering the appearance of either party by	
	attorney or personally, to be charged	
	but once, - - - - -	8
	entering special bail, - - - - -	18
	a copy, if required, - - - - -	13
	filing declaration, plea or demurrer, &c.	10 1-2
	entering every rule on the rule docket,	12 1-2
	every order in court not herein other-	
	wise provided for, - - - - -	25
	a copy thereof, - - - - -	18
	every trial, swearing jury and witnesses,	
	and recording a general verdict, - - - - -	75

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	Dol. Cts.
For every trial where there is a special verdict or case agreed, swearing jury and witnesses, &c. - - - - -	1
entering up every judgment, or a copy thereof, - - - - -	18
taxing costs in every suit where costs are recovered, or for a copy thereof, every <i>scire facias</i> and recording return, every execution, <i>ca. sa.</i> or <i>fi. fa.</i> and recording the return thereof - - -	18 40 33
every writ of <i>elegit</i> , - - - - -	30
recording the return thereof, for every 20 words, - - - - -	2
copy of an execution and return, - - -	25
recording the award of auditors, viewers, arbitrators, and so forth, for every 20 words, - - - - -	2
every order to witnesses for attendance, to be charged to the party against whom such order goes, - - - - -	18
a copy thereof, - - - - -	15
issuing every attachment, - - - - -	18
taking bonds to secure costs upon injunctions in chancery, or upon appeals, or <i>certiorari</i> , - - - - -	33
a copy thereof, - - - - -	20
returning an appeal, writ of error, <i>superse- deas</i> or <i>certiorari</i> , - - - - -	25
filing the same, - - - - -	12 1-2
recording the acknowledgment of satisfaction of a judgment, - - - - -	18
each summons for a witness or witnesses, administering an oath in court, not relating to the trial of any cause there depending, and certifying the same, - - -	18 18
copy of an account if contained in one page or less, - - - - -	18
if more than one page, for every 20 words, - - -	2
filing every attachment granted by justice of the peace, - - - - -	12 1-2
each summons for garnishee or garnishees on an attachment, - - - - -	18
administering oath to garnishee or garnishees, - - - - -	12 1-2

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1798.

DOL. CTS.

For recording the confession of each garnishee,	15
<i>subpoena</i> in chancery,	21
endorsement on a <i>subpoena</i> or injunction,	10
filing each bill, answer, replication or other pleading in chancery,	10
an order to advertise or an order of survey,	37 1-2
recording a connection of surveys in surveyor's report, for every survey laid down in such connection, with its references,	12 1-2
copy thereof, each,	6
recording the report of surveyor, for every 20 words,	2
a copy of the same, for every 20 words,	2
a commission to take depositions,	25
filing the deposition of each party,	15
entering every decree at large, for every 20 words,	2
every writ <i>de idiota inquirendo</i> ,	25
recording return, for every 20 words,	2
every writ of <i>certiorari</i> ,	33
making a complete record in every cause, for every 20 words,	2
a copy of the same, for every 20 words,	2
every copy of every paper or record not herein otherwise provided for, for every 20 words,	2
recording a deed of bargain and sale, taking the acknowledgment or proof thereof, and certifying the same,	1
every tract more than one contained in the same,	25
recording each certificate annexed to, or endorsed on such deed, when offered to record,	16
a copy of any deed, three-fourths of the fee for recording the same,	
issuing a commission for taking the privy examination and acknowledgment of <i>feme covert</i> , &c. and for recording the same and recording the return thereof,	75
a deed concerning slaves or personal matters only,	75

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	Dec. Cts.	1798.
For copy thereof with certificate of proof,	57	<u> </u>
recording a letter of attorney, -	50	
each certificate endorsed thereon, when		
offered to record, - - -	15	
a copy thereof with its certificate, -	50	
recording a bond conditioned to convey		
land or articles of agreement for that		
purpose, - - -	50	
copy thereof with certificate of proof,	37 1-2	
a bond or note for the payment of money		
only, - - -	33	
copy thereof with certificate of proof or		
acknowledgment, - - -	25	
a search for any thing above a year's stan-		
ding and reading the same, if a copy is		
not required, - - -	12 1-2	
filing the papers of each party in every		
cause, - - -	18	
affixing seal of office and certificate accom-		
panying same, - - -	50	
each certificate for which no fee is herein		
specially allowed, - - -	25	
recording every official certificate for		
which no fee is herein specially allowed,	25	
To the clerk of the court of quarter sessions		
for attending the court for the examination		
of a criminal and trial of a slave, if the		
court is held for that purpose, -	4	

There shall be paid to each clerk of a district court and court of quarter sessions, for swearing and entering grand juries, issuing summonses on presentments and informations, and for witnesses, swearing juries and witnesses on presentments and indictments, where the party is not convicted, certificates to the members of the courts of quarter sessions, taking depositions on examination of criminals, recognizing witnesses and prosecutor, and furnishing copies to the attorney-general and district court, entering and certifying allowances to sheriffs and guards, copying their respective accounts, and for all public services for which no fees are herein particularly provided, to be paid from the public treasury, on a certificate of the court to which such clerk shall belong, that is to say,

Allowance for public services.

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1798. To the clerks of the district courts, any sum not exceeding 60 dollars:

To the clerks of the courts of quarter sessions, any sum not exceeding 30 dollars.

And there shall be allowed to the clerk of the general meeting of the judges of the district courts, annually, any sum not exceeding 60 dollars.

Sec. 6. TO THE COUNTY COURT CLERKS.

County court clerks' fees. For recording deeds, letters of attorney, bonds, promissory notes and articles of agreement, issuing commissions to examine *femes covertes*, or take depositions, or for copies thereof, and for all other services similar to those performed by the clerks of the district and quarter session courts, the same fees as are allowed to the clerks of the last mentioned courts for such services.

	DOL.	Cts.
For the probate of any will or testament and certificate thereof, -	33	
recording a will, for every 20 words, -	2	
administering oath to executor or administrator, and taking bond, -	40	
for entering the order or orders for appraising the estate, -	18	
copy thereof, -	12	1-2
certificates of administration and copy, -	25	
recording inventory, for every 20 words, -	2	
a copy of a will or inventory, for every 20 words, -	2	
ordinary license bond, -	50	
copy of rates of liquors, &c. -	25	
marriage license bond, -	1	
recording depositions taken to perpetuate testimony, for every 20 words, -	2	
copy thereof, for every 20 words, -	2	
recording certificate of stray or strays, -	20	
a copy thereof, -	14	
advertising the same, -	16	
order to bind out apprentice, -	25	
writing the indenture, -	50	
recording the same, -	50	
filing appeal from justice of the peace and docketing the same, -	25	
taking bond to prosecute, -	25	

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	DOL. CTS.	1798.
For issuing a writ in the nature of a writ of <i>ad quod damnum</i> , - - -	50	
recording the report of a jury thereon, for every 20 words, - - -	2	
making a record of the establishment of a town, recording the plan thereof, and all other services relating thereto, - -	3	

All public services of the clerk, (to wit.) for entering and copying orders for viewing and opening roads, entering and copying orders for appointing surveyors of highways, and constables, taking the list of titheables, entering the levy, and copies thereof, and of the list of titheables for the collectors, and for entering and issuing the orders, and all other public services for which no particular fees are allowed, to be levied annually by the justices of the county, a sum not exceeding forty dollars. And it shall be the duty of the clerk, every year, to lay before the court, when laying the county levy, a statement of the *ex officio* services by him performed the year preceding, annexing the fee to each service, agreeably to the allowance herein made, for services of a similar nature.

Allowance for public services.

Payable by the county.

Clerk to lay before the court a statement of *ex officio* services.

Sec. 7. *And be it further enacted*, That the clerk of every quarter session and county court hereafter appointed, shall keep his office at or within one half mile of the court-house of the county to which he may belong, so soon as the county court shall provide a room for that purpose.

Certain clerks to keep their offices at or near the court houses.

Sec. 8. *And be it further enacted*, That upon the resignation or removal from office, of any clerk of the court of appeals, or any district court, court of quarter sessions, or county court, such clerk shall immediately upon application, deliver to such person or persons as their respective courts shall appoint for that purpose, all books, records, and other papers, belonging to his office. And any clerk who shall fail or refuse to deliver such books, records and papers to such person or persons as shall be appointed by the courts respectively to receive them, upon application, shall forfeit and pay one thousand dollars, to be recovered by action of debt or information, in any court of quarter sessions or district court, or any other court having cognizance of the same; and shall, moreover, be guilty of a contempt of the court to

Clerk resigning, or removed from office, to deliver up the books, records, &c.

Under penalty.

1798. which he may belong, and shall also be guilty of a high misdemeanor, and punished with fine and imprisonment.

Sec. 9. *And be it further enacted,* That the judges of the superior courts, and the justices of the quarter session and county courts, shall annually appoint three fit and proper persons to examine the offices of their clerks, and compare the records with the papers filed in the several suits in the respective offices; and report the state of the office to the court by whom they are appointed, within two months from the time of their appointment.

Sec. 10. *And be it further enacted,* That every clerk who shall hereafter be appointed to any court, shall immediately after such appointment, and every clerk now in office shall, within three months from the passage hereof, lodge his bond, which is required by law to be given by him, for the due execution of his office, with the presiding judge or justice of such court, to be by such judge or justice transmitted to the secretary of state, who is hereby directed to file said bond in his office; and any person desirous of instituting a suit on said bond, shall apply to said secretary for a copy thereof, who is hereby directed to give an attested copy of such bond, which shall have the same force and validity as the original might have; but every such clerk shall first take a copy of such bond (which shall be examined and attested by the said presiding judge or justice) and shall file and record the same in his office. And every clerk failing herein shall forfeit and pay one thousand dollars, to be recovered by any informer, and to his use, by action of debt or information, in any court of record within this commonwealth having cognizance of the same.

Sec. 11. TO THE SHERIFF.

Sheriff's fees.		Dol. Cts.	
		Dol.	Cts.
	For an arrest, bond and return,	62	1-3
	returning a <i>capias non est inventus</i> ,	21	
	serving a <i>scire facias</i> ,	31	
	serving any person with an order of court,		
	and making return thereof,	31	
	pilloring any person,	41	1-2
	putting into the stocks,	21	
	ducking any person,	41	1-2
	putting in prison and releasement,	41	1-2

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	DOL.	Cts.	1798.
For serving a <i>subpoena</i> in chancery, -	31		<u> </u>
serving a <i>subpoena</i> for a witness in any cause in court, except summoned in court, - - - - -	21		
summoning an appraiser, auditor, viewer, or witness to any deed, will or writing, if required to be summoned, but not else, - - - - -	21		
summoning and empanneling a jury, in every cause wherein a jury shall be sworn, - - - - -	1	4	
for coming to and attending the district court with the <i>venire</i> , and return of the <i>venire facias</i> , the same as is allowed to a <i>venire</i> man, to be paid by the public, and for attending the district court with stolen goods, where there is no <i>venire</i> , the same, - - - - -	1	4	
summoning the justices of the county and attending the court of oyer and termi- ner, or for examination of a criminal, -	4	17	
removing every criminal from the county jail to any public jail, for every mile, -	12	1-2	
removing a debtor by a <i>habeas corpus</i> , from the county jail to any public jail, for every mile, - - - - -	4	1-2	
executing any condemned person, and all fees incident, - - - - -	5	21	
summoning a jury upon any inquisition, survey, writ of dower or partition, if the jury appear, - - - - -	3	12 1-2	
and if the jury do not appear, - - - - -	1	56	
making a return of writ of dower, parti- tion, or in the nature of an <i>ad quod</i> <i>damnum</i> , - - - - -	1	4 1-2	
every day's attendance upon a jury in the county after they are sworn, or atten- dance upon a surveyor, when ordered by the court, - - - - -	1	4 1-2	
serving a writ of <i>habere facias seisinam</i> , or <i>habere facias possessionum</i> , - - -	63		
serving a declaration in ejectment, if a- gainst one tenant, - - - - -	63		

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Dol. Cts.

if against more tenants than one, for serving a declaration upon every other tenant,	31
whipping a servant, to be paid by the owner, and re-paid by the servant,	41 1-2
whipping a free person by order of court, to be paid by such person,	41 1-2
whipping a slave by order of court, to be paid by the public,	41 1-2

Commission on executions.

Serving an execution if the property be actually sold or the debt paid, or where the sheriff shall have taken bond for the delivery of property, which is not complied with at the day of sale, five per centum on the first hundred pounds, and two per centum on all sums above that. And where he shall have levied execution, and the defendant shall have replevied, or where under the same circumstances, execution is stopped by injunction, writ of error, *supersedeas*, or by order of the party for whom it is issued, one half of the above commissions.

Dol. Cts.

For serving an attachment upon the goods, exceeding three pounds, if sold, the same fee as for serving an execution where the goods do not exceed that value, or are not sold,	63
every garnishee summoned on such attachment,	21
serving a writ of <i>distringas</i> ,	66
selling a servant at public out-cry, by order of court, and all fees incident,	41 1-2
keeping and providing for a debtor in jail, each day,	21
keeping and providing for a runaway or criminal in jail, each day, to be paid by the public,	18

Allowance for public services.

All public services of the sheriff, to wit : attending the court of claims and grievances, empanneling grand juries, publishing writs for electing members of assembly, and attendance, serving all public orders of court, (except against guardians, where they shall stand out in contempt, to be charged to such guardians,) and all other public and county services, (to be levied annually by the

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justices of the county,) a sum not exceeding forty dollars.

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And there shall be allowed to each person summoned and attending to guard criminals in any jail, per day, -

DOL. CTS.

Allowance to persons summoned to guard criminals.

75

For travelling to and returning from guarding any prisoner to the public jail, per mile, and the said guards shall furnish themselves at their own expence, -

Their mileage.

3

And the said sheriff shall lay before the court an account of his said services, to enable them to judge of the quantum of his allowance within the said limits.

Sheriff to lay account of services before the court.

Sec. 12. TO THE CORONER.

DOL. CTS.

Coroner's fees.

For taking an inquisition on a dead body, to be paid out of the estate of the deceased, if the same be sufficient, if not, by the county, -
all other business done by him, the same fees as are allowed sheriffs for similar services.

6

TO THE JUSTICES OF THE PEACE.

For issuing a warrant for any sum, -
copy of a judgment and papers on an appeal, -
certificate of an oath, where it shall be required, -
posting a stray, for the whole service, -
issuing an attachment and taking bond, -
issuing a summons for a garnishee or garnishees, and taking schedule of effects, -
an order of sale, -
a peace or search warrant, each, -
attending to take depositions in any case, per day, -
taking a recognizance or special bail, -
certifying a power of attorney or deed of conveyance, -
a hue and cry, and escape warrant, each, -
issuing an execution, -

12

50

12

17

50

25

12

12

75

12

12

25

17

Fees to justice of the peace.

Any justice who shall demand or receive a greater fee for any service than is hereby allowed, or receive a fee

Penalty on justices receiving

1708. for any other service than is hereby specified, shall, for every such offence, forfeit and pay five pounds, with costs, on motion or information of the party aggrieved, for his or her use, or any person suing for the same, in the court of quarter sessions in the county where such offence shall be committed, and such court shall give judgment accordingly; and such justice shall moreover forfeit his office. When two or more strays of the same species are posted by any justice, such justice shall receive the same fee only, as if there were but one, from any one person. The justices in case of non-payment, shall have power to make out their fee-bills, for any fees that may become due by virtue of this act, and put the same into the hands of the sheriff or constable, to be collected and paid as the fees of the sheriffs of the several counties are within this state; and each justice shall from time to time keep a fair record of his proceedings, under the penalty of fifty dollars.

greater or other fees than the law allows.

Fees for strays.

They may put fees into the sheriff's hands to collect.

And shall keep a record of their proceedings.

Sec. 13. TO THE CONSTABLE.

		DOL.	Cts.
Constable's fees.	For serving a warrant for debt,	-	25
	summoning witnesses in any case,	-	12 1-2
	serving a peace or search warrant,	-	34
	levying an attachment,	-	25
	summoning a garnishee,	-	12 1-2
	carrying a criminal to jail, each mile, in going and returning,	-	3

And if any plaintiff or defendant, or his or her attorney, shall take out copies of his or her own declarations or pleadings, or of his or her own papers in any cause, or of any common order made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recover; and where more attorneys than one shall be employed in any cause, on one side, if such attorneys take out more than one copy of any thing necessarily relating to the suit, yet no more than one copy shall be allowed in the bill of costs; neither shall the clerk tax any fee in the bill of costs for entering more than one attorney, nor more than one attorney's fee, although costs shall be adjudged against the adverse party.

And to the end all persons chargeable with any of the fees aforesaid, may certainly know for what the same was charged,

Rules in taxing costs for copies, entering attorneys, &c.

Sec. 14. *Be it further enacted*, That none of the fees herein before mentioned, shall be payable by any person whatsoever, until there shall be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing, containing the particulars of such fees, signed by the clerk or officer to whom such fees shall be due, or by whom the same shall be chargeable, respectively ; in which said bill or account, shall be expressed in words at length, and in the same manner as the fees aforesaid are allowed by this act, every fee for which any money shall be demanded.

1798.

Bills of fees to be produced to party chargeable.

And when any person or persons presented by the grand jury shall be discharged of such presentment, neither the clerks or sheriffs shall charge fees for the same, but it shall be deemed to be included in the public services ; but if the party or parties so presented, shall be convict, then in such case the clerk and sheriff shall charge him, her or them with all fees accruing thereon.

Fees on presentments, when chargeable.

The clerk of every court shall set up in some public place in his court-house, and also in his office, a fair list of clerks' and sheriffs' fees, carrying out the amount for every particular service agreeably to this act, and shall keep the same constantly up, under the penalty of five pounds for every two days succeeding each other that the same shall not be kept up in the office, and for every two succeeding courts the same list shall not be kept up in the court-house.

List of clerks' and sheriffs' fees to be set up in the court-house and office.

The clerk of the court of appeals, and of the several district courts within this commonwealth, shall transmit in the months of January and June, in every year, a list of all the deeds recorded in their respective offices, which have not before been transmitted, to the clerks of the county courts of the counties in which the land so deeded shall severally lie, describing particularly the name of the person or persons acknowledging each deed, and to whom made, the number of acres, and the name of the county and water course in and on which it is situate, and the name of the person in whose name the entry was made, or to whom the land was granted, if known. And the clerks of the district, quarter session, and county courts, shall transmit in like manner a similar list to the clerk of the court of appeals ; and both the clerks of the county courts and court of appeals shall keep a book, to be provided for that purpose, to enter all such lists ; and

List of deeds recorded, to be transmitted by clerks of certain courts to others.

1798. .
 Fees for such
 service.

Clerks of
 county & quar-
 ter session courts
 may receive ac-
 knowledgment
 of deeds out of
 court.

Penalty for tak-
 ing greater
 fees, &c. than
 are herein al-
 lowed.

Repealing
 clause.

any deed may be recorded in any county or district court where the land or any part thereof lies. The clerks respectively shall be allowed for transmitting and recording a memorandum of a conveyance of each tract of land, twelve and one half cents. And it shall be lawful for the clerks of the county courts and courts of quarter sessions to receive the acknowledgment or proof of deeds out of court, in like manner as the clerk of the court of appeals or district court clerks are authorised to do by law.

And that if any officer hereafter shall claim, charge, demand, exact or take, any more or greater fees for any writing or other business by him done, within the purview of this act, than is herein before set down and ascertained; or if any officer shall charge and take any of the fees herein before mentioned, where the business for which such fees are chargeable shall not have been actually done and performed, or shall charge and take any greater fee than is herein allowed, to be proved by the fee-book of such officer upon his corporal oath, such officer, for every such offence, shall forfeit and pay the party injured, besides such fee or fees, four dollars, for every particular article or fee so unjustly charged and taken, to be recovered with costs before any justice of the peace of the county wherein the officer making such unlawful charge or demand resides; provided the same be sued for within twelve months after the offence shall have been committed.

So much of every act or acts as comes within the purview, or relates to any matter or thing within the purview of this act, shall be, and the same is hereby repealed.

CHAPTER CLXXV.

An ACT allowing the Settlers south of Green River to pay the money due the State in equal annual instalments, and for other purposes.

Approved December 22, 1798.

See the preface to Chap. 220, of Vol. I.

Preamble.

WHEREAS the settlers on the south side of Green river labor under great inconvenience from the scarcity of money; for remedy whereof,

Sec. 1. *Be it enacted*, That all persons who have obtained certificates under the act passed at the last session,

The act under
 which claim-

entitled, "an act to amend and revise the act entitled an act for encouraging and granting relief to settlers on the south side of Green river," shall be allowed to pay the same by equal annual instalments of one fourth part of the purchase money, together with lawful interest annually on the sum due. The first annual payment to be made on or before the fifteenth day of November next.

Sec. 2. *Be it further enacted*, That the register of the land-office be and he is hereby directed not to issue a grant on any of the above certificates, until the whole of the money be paid, and that the commonwealth have a lien on the land for any money that may be due on the same.

Sec. 3. *And be it further enacted*, That all claimants under any former acts past previous to the year 1797, for encouraging and granting relief to settlers, shall have the further time of six months to pay into the treasury the several sums due from them; during which time, no forfeitures shall accrue for any failure of payment according to the provisions of any former law. *Provided*, that no assignee or assignees, or their or either of their heirs or assigns, of any claim for lands granted to settlers on Green river, shall be benefited by this act, unless he, she or they shall have actually resided thereon, for and during one year from and after the first day of April next.

This act shall commence and be in force from and after the passage thereof.

1798.

ants of land are to pay for the same by annual instalments.

First payment:

Register not to issue grants until the whole money be paid.

Claimants of lands under any acts prior to 1797, to have six months further indulgence to pay for them. Without forfeiture.

Provido as to time of settling.

CHAPTER CLXXVI.

An ACT for the Appropriation of Money.

Approved December 22, 1798.

The first section of this act contained merely the usual annual appropriations. The subsequent sections are as follow:

And be it further enacted, That upon application of the directors appointed to contract for and superintend the building of a jail and penitentiary house, the auditor shall issue warrants to the amount of three thousand dollars; and at the expiration of six months, on like application, the auditor shall issue warrants for five thousand dollars more, to be applied towards completing the jail and penitentiary house.

1799.

And be it further enacted, That the auditor shall issue a warrant for any sum not exceeding thirty dollars, for a new state seal ; which the governor is hereby required to cause to be made, with the words, "land office," added to the present inscription ; and the register shall have charge of the same, and affix it to all grants issued from his office.

November Session, 1799.

CHAPTER CLXXVII.

An ACT directing the County Courts to appoint Patrollers.

Approved November 29, 1799.

County courts
to appoint pa-
trollers.

SECTION 1. *BE it enacted by the general assembly, That the several county courts within this commonwealth, shall, from time to time, lay off their respective counties into as many districts, not exceeding five, as to them shall be deemed necessary ; and appoint in each district a company of patrollers, to continue in office for twelve months, consisting of one discreet person, to be called the captain of the patrol, and as many others under his direction as they may deem necessary, not exceeding four, who shall severally take an oath to perform the duties assigned them by this act ; and the said company so appointed, shall patrol as many hours in each month, as the court appointing the same may direct, but not to be less than twelve hours in each month, within their respective bounds to them assigned, and visit negro quarters and other suspected places of unlawful assemblies of slaves. And any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his or her master, mistress, or overseer, shall receive any number of lashes on his or her bare back, at the discretion of the captain of the patrol, not exceeding ten, and if taken before a magistrate, he or she shall receive any number of lashes, at the discretion*

Patrollers' duty

Punishment of
slave strolling
without a pass.

of such magistrate, not exceeding thirty-nine, on his or her bare back. And no slave shall be suffered to buy or sell any article of property whatever, unless such slave shall have in writing, particularly specifying in his or her pass, such article or articles; and any slave found in the possession of any article of property, without such writing as aforesaid, shall be subject to suffer any number of lashes, at the discretion of the captain of the patrol, not exceeding ten, and if taken before a magistrate, he or she shall receive any number of lashes, at the discretion of such magistrate, not exceeding thirty-nine, on his or her bare back. And the captain of the patrol shall receive as a compensation for his services, the sum of four shillings for every twelve hours he may be employed in the duties hereby enjoined him, and the assistant patrollers, shall receive for their services, each of them, three shillings, for every twelve hours they may be employed in the duties hereby enjoined them, to be paid out of the county levy, and moreover be exempt from militia service, for and during the term such person may continue in appointment as aforesaid. And the clerk of said county shall furnish the commanding officer of the regiment or judge advocate with the names of such patrollers, and the time of their service. And the said patrollers shall make return upon oath of the time they have respectively been employed as aforesaid, before some justice of the peace, and such justice shall certify the same; which certificate shall be laid before the court of claims in each county, to be levied accordingly.

1799.

Or found in possession of property not specified in his pass.

Compensation to the captain of patrol, and his associates.

Their privileges.

They are to return on oath, the time of their service.

Sec. 2. *And be it further enacted*, That all and every act or acts, or parts of acts, that come within the purview of this act, shall be, and the same are hereby repealed.

Repealing clause.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER CLXXVIII.

An ACT for adding a part of Cumberland County to the County of Barren.

Approved November 29, 1799.

SECTION 1. *BE it enacted by the general assembly*, That all that part of the county of Cumberland in the fol-

1799.

lowing bounds, to wit: Beginning where the said county line and Barren county line corner in the state line between Tennessee and Kentucky, thence eastwardly with said state line six miles, thence north to a corner of said Barren and Cumberland, thence west six miles to Barren county line, thence with the said county line south to the beginning, shall be, and the same is hereby added to and made a part of the said county of Barren.

Sec. 2. *And be it further enacted*, That the sheriff of Cumberland is hereby directed and empowered to collect and make distress for all public dues and officers' fees which shall remain due and unpaid by the inhabitants hereby added to the county of Barren as aforesaid, at the time such division shall take place. And the court of the said county of Cumberland, shall have jurisdiction in all cases, either in law or equity, which shall then be depending before them, to issue process and award execution thereon.

CHAPTER CLXXIX.

An ACT concerning the Turnpike on the Wilderness Road.

Approved December 9, 1799.

SECTION 1. *BE it enacted by the general assembly*, That the governor is hereby required to lease annually, or for a term of years not exceeding five, upon the best terms he can, the keeping of the turnpike on the wilderness road, having due regard to the rates of toll now established by law; and for all wheel carriages coming to this country with movers, the same rate of toll as is now by law for all other wheel carriages of the same kind. The keeper of the turnpike shall enter into bond with good security, to be approved of by the governor, in the penalty of three thousand dollars, if let for one year, and so in proportion for a longer time, as it may be let, to keep the said road during his lease, in good repair; and he shall be entitled to the same emoluments and subject to the same fines, penalties, forfeitures and prosecutions, as are prescribed by the act entitled "an act to amend an act entitled an act for opening a road to Cumberland Gap," except as is herein otherwise directed and provided.

Governor to lease the turnpike, how, and on what terms.

Rates of toll.

Keeper to give bond, &c.

Shall be entitled to certain emoluments, & subject to certain fines, &c.

Sec. 2. *And be it further enacted,* That this commonwealth may incur no further expence in keeping the said road in repair, the governor, at the time of leasing the said turnpike, shall take from the person entering into such lease, a bond with good security, in the penalty of five hundred dollars, if for one year, and so in proportion for a longer time, as it may be let, payable to the governor and his successors, for the use of this commonwealth, conditioned for the payment of not less than one hundred dollars, payable in two equal annual instalments, during the continuance of his lease; the amount of which bond may be recoverable, when due, by motion by the auditor, in any court of record in this commonwealth, having jurisdiction thereof; on giving the obligor, or his securities, ten days notice of such motion.

1799.

The keeper to give bond, &c. for the payment of not less than 100 dollars, & to whom payable.

To be recoverable by motion of the auditor, &c.

Sec. 3. There shall be one commissioner appointed annually by the governor, who shall have all the powers of the two directed to be appointed by the aforesaid act; who shall be allowed the sum of two dollars per day, for the time employed by him in discharging the duties enjoined him by said act, upon his making satisfactory proof to some county court, of the time he was so employed, and upon the production of such certificate to the auditor, he shall grant a warrant for the same, which shall be paid by the treasurer.

Commissioner to be appointed, and his power and duty.

His compensation and how paid.

Sec. 4. The commissioners heretofore appointed under the aforesaid act, shall be entitled for the services already rendered by them, to the sum of two dollars per day; and upon their producing to the auditor, a certificate from a county court as aforesaid, he shall issue to them a warrant on the treasurer for payment.

Compensation allowed the former commissioners & how to be paid.

Sec. 5. *And be it further enacted,* That the governor is hereby authorised, to remove the aforesaid turnpike keeper, at any time, from his appointment, on good cause shewn for that purpose, and fill the vacancy accordingly.

Governor, for good cause, may remove the keeper and appoint another.

This act shall commence and be in force from and after the passage thereof.

To commence.

1799.

CHAPTER CLXXX.

An ACT for incorporating the Vineyard Society.

Approved November 21, 1799.

SECTION 1. *BE it enacted by the general assembly, and it is hereby enacted,* That Samuel Brown, John A. Seitz, Peter D. Robert, Andrew Holmes, William Leavy, Alexander Parker, Thomas Bodley, John Bradford, Robert Patterson, Walker Baylor, Benjamin Stout, James Hughes, and the rest of the subscribers, who now have, or may hereafter subscribe to the vineyard association, shall be a body politic and corporate, by the name and stile of the "Directors and Society for promoting the cultivation of the Vine:" and shall have power to sue and be sued, implead and be impleaded, by the said name; and to have and make use of a common seal; and the same at pleasure of said directors, at any time to destroy and another to make, as they may deem proper.

Vineyard society incorporated, and of whom to consist.

Its name.

Their powers.

Sec. 2. *And be it further enacted,* That it shall and may be lawful for the share-holders to meet, when and where, and for what purpose, the twentieth day of March, in the town of Lexington, at the house of John Postlethwaite, in the year of our Lord, one thousand and eight hundred; and then and there elect and choose twelve persons, being members of the said society, to be directors for the said society, who shall continue in office for one year from the said day. A like election for the same purpose, shall take place, and that annually thereafter forever. And that the directors so elected and chosen, shall, at all times, have, hold, possess and exercise all the authority invested in them by this act, and the power vested by the articles of association of the subscribers, in the committee of directors.

Share-holders to meet, when and where, and for what purpose.

What time the directors appointed, shall continue in office.

Privileges and authority of the directors, &c.

Sec. 3. *And be it further enacted,* That the directors appointed by, or elected under this act, may make by-laws for the government of the said corporation, the same not being inconsistent with this act, or the laws of this commonwealth, or the articles of association as subscribed by the members of the association.

May make by-laws for the government of the corporation.

Sec. 4. *And be it further enacted,* That the directors shall also have power to make any contract which they may deem proper: *Provided* the whole of their contracts do not exceed the funds of the corporation; and

To make contracts.

Proviso.

that no individual being a share-holder, shall be liable for a greater sum than the amount of the shares for which he has subscribed. 1799.

Sec. 5. *And be it further enacted*, That the said directors shall be authorised to recover any sum or sums of money now due, by any person or persons to the vineyard association, agreeable to the terms of a contract between John James Dufour and the subscribers to the Kentucky association for the establishment of a vineyard; or which may become due to the said corporation, in the same manner and by the same mode of process, as debts of the like kind are now recoverable by law. To recover any sum of money by law due, or which may be due the said corporation.

Sec. 6. *And be it further enacted*, That seven of the said directors shall form a quorum to proceed to business, a majority of whom, shall determine on any question. What number of directors shall be a quorum, &c.

Sec. 7. *And be it further enacted*, That the said directors shall also have power to declare at what time, and in what proportions of the several shares, the subscriptions shall be payable, and to receive further subscriptions and payments of shares, not exceeding in the whole, with what is now subscribed, two hundred shares; they shall also appoint, annually, at their first meeting, after the election herein before directed, a president among their own body, a treasurer and a clerk. Their further powers.

Sec. 8. *And be it further enacted*, That all the estates, rights, properties, privileges, debts and funds of every kind, of or belonging to the said vineyard association, shall be, and the same are vested in the aforesaid corporation. Funds, &c. vested in the corporation.

Sec. 9. *And be it further enacted*, That the shares of the subscribers shall be transferable by deed, will, or assignment, to be duly recorded in books, to be kept by the clerk of the directors for that purpose. Shares to be transferable, & how, and transfer to be recorded, &c.

Sec. 10. *And be it further enacted*, That all contracts heretofore made by the said association, in the committee of directors, with any person or persons whatsoever, are hereby declared valid and binding, as if made between the said corporation and the said person or persons, both on the said corporation and the said person or persons. And in order that the articles of association, and the said contracts, may at all times be capable of proof, it is hereby further enacted, that they shall be all Certain contracts made binding, and on whom. Articles and contracts to be recorded in the court of appeals.

1799. recorded in the office of the clerk of the court of appeals.

Profits, how
divided or ap-
propriated.

Sec. 11. *And be it further enacted*, When any profits or produce shall arise from the funds of the said corporation, it shall be the duty of the directors to advertise the same, so that the subscribers at the annual election may determine whether the produce shall be divided, or whether the same shall be sold, and the nett proceeds thereof be divided; which advertisement shall be inserted in two newspapers printed at different places within this state, two months before the time of said election.

To commence. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXXXI.

An ACT for adding a part of the County of Madison to the County of Garrard.

Approved December 9, 1799.

SECTION 1. *BE it enacted by the general assembly*, That from and after the first day of January next, all that part of the county of Madison which is contained within the following lines, to wit: Beginning at the mouth of Mason's fork of Paint-Lick creek, where it empties into Paint-Lick; thence up the same to the head of that fork that Montgomery's old field is on; thence to the head of the nearest fork of Copper creek, and down the same to the Lincoln line, shall be, and the same is hereby added to and made a part of the county of Garrard.

Sec. 2. *And be it further enacted*, That the sheriff of the county of Madison shall, and he is hereby directed to collect and distrain for all public dues and officers' fees which may now be due to the county of Madison by the inhabitants within the lines before recited, in the same manner as if this act had never been passed.

This act shall commence and be in force from and after the first day of January next.

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CHAPTER CLXXXII.

1799.

An ACT for the division of Hardin County.

Approved December 9, 1799.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of January next, all that part of the county of Hardin which is included in the following bounds, to wit: Beginning at the mouth of Blackford's creek, running with Ohio county line to Rough creek, then up said creek opposite the mouth of Big Clifty, from thence such a course as will strike the Big Spring on the road leading from Elizabethtown to Hardin's settlement, thence such a course as will strike the head of Wolf creek, thence down the said creek to the Ohio river, and down the said river to the beginning, shall be one distinct county, and called and known by the name of Breckenridge.

Boundaries.

Name.

Sec. 2. After the said division shall take place, the courts for the said county of Breckenridge, shall be held on the third Monday in every month; and the court of quarter sessions shall be held annually in the months of February, April, June and September, in such manner as is provided by law in respect to other counties in this state.

Courts when held.

Sec. 3. The justices named in the commission of the peace for the said county of Breckenridge, shall meet at the house of William Hardin, on the first court day after said division shall take place; and having taken the oaths prescribed by law, and the sheriff being duly qualified, the court shall proceed to appoint and qualify their clerk and fix on a place for the seat of justice for the said county, and proceed to erect the public buildings at such place. *Provided always,* that the place for the permanent seat of justice shall not be fixed, nor shall a clerk be appointed (except *pro tempore*) unless a majority of the justices of the court for which the clerk is to be appointed concur, but shall be postponed until such majority can be had.

Where & when justices to meet and for what.

Provide.

Sec. 4. It shall be lawful for the sheriff of the county of Hardin to make distress for any public dues or officers' fees unpaid by the inhabitants within the bounds of the said county of Breckenridge, at the time such division shall take place; and he shall be accountable in like manner as if this act had not been passed.

Power & duty of the sheriff of Hardin.

1799. Jurisdiction of the courts of Hardin. Sec. 5. The courts of Hardin county shall have jurisdiction over all actions and suits at law or equity, depending therein at the time of said division, and they shall try and determine the same, issue process and award execution thereon.

To commence. This act shall commence and be in force from and after the first day of January next.

CHAPTER CLXXXIII.

An ACT to amend the act entitled "an act allowing Settlers South of Green River, to pay the Money due the State by Instalments, and for other purposes."

Approved December 10, 1799.

See the preface to Chap. 220, of Vol. I.

Settlers or their assigns allowed further time to pay up. SECTION 1. *BE it enacted by the general assembly,* That all persons, or their assigns, who have obtained certificates for settlements, under any former act for encouraging and granting relief to settlers on the south side of Green river, passed prior to the year one thousand seven hundred and ninety-seven, and who have not paid into the public treasury the several sums due from them, shall be allowed the further time of ten months to pay the same. And every person who shall, before the expiration of the said term of ten months, pay the sum due from him to this commonwealth, with lawful interest from the time the money first became due, till the time of payment, shall be released from the forfeiture which has been incurred by failure of payment according to the provisions of any former law.

Settlers, &c. under the act of February 10, 1798, also allowed further time. Sec. 2. *Be it further enacted,* That all persons, or their assigns, who have obtained certificates under the act approved February 10th, one thousand seven hundred and ninety-eight, entitled, "an act to amend and revise the act entitled an act for encouraging and granting relief to settlers," who have not paid the first annual instalment agreeably to the provisions of the act passed at the last session of the general assembly, entitled, "an act allowing settlers south of Green river to pay the money due the state, in equal annual instalments, and for other purposes," shall be allowed the further time of ten months to pay the same: and every person, who shall, before the expiration of the said term of ten months, pay

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the said annual instalment, with lawful interest till the time of payment, shall be released from the forfeiture which has been incurred by failure of payment, according to the provisions of any former law.

1799.

Sec. 3. *And be it further enacted*, That any person or persons, or his or their assigns, who, through mistake, may have obtained a certificate for a settlement on a military or other prior claim, from the commissioners, in conformity to any of the before recited acts, shall have the further time of eight months, to remove and locate the same, or any part thereof, which may be so lost, on any land on the south side of Green river, not at that time legally appropriated or entered for by any other person, or body politic and incorporate, or settled on, with two hundred acres including such settlement, and shall make an entry of the land on which he or she may have so settled, in the surveyor's office of the county in which the land lies: *Provided*, That every such person shall make it appear to the court of his county by good proof, that he has so settled himself on military or other claims, through ignorance, and shall produce a certificate from such court to the surveyor of the county, to the above effect, before such surveyor shall suffer or permit any entry for lands thus claimed.

Further time allowed to remove location.

Provide.

Sec. 4. *And be it further enacted*, That the further time of eight months, from and after the end of the present session of the general assembly, shall be allowed to all persons who have obtained certificates under any of the before recited acts, to survey the land to which they may be severally entitled by this or any former law, and return plats and certificates of survey to the register's office.

Further time allowed to survey.

And return the plats, &c.

Sec. 5. *Be it further enacted*, That it shall and may be lawful for all and every person or persons owning any lands appropriated by virtue of any military warrant or warrants, or any part thereof, which may be included within the boundary of the grant of Henderson and company, on the Ohio and Green river, to withdraw such warrant or warrants for such land included as aforesaid, from the register's office.

Military warrants may be withdrawn.

This act shall commence and be in force from and after the passage thereof.

To commence.

NOVEMBER SESSION,

1799.

CHAPTER CLXXXIV.

An ACT concerning the Register.

Approved December 13, 1799.

Vide Vol. I, Chap. 11, and the notes.

BE it enacted by the general assembly, That it shall be the duty of the attorney-general, for the time being, on the application of the register of the land-office, to give his advice and direction in all cases new and difficult, which may arise in conducting the business of the said office; and such counsel shall be taken in writing, and filed in the office of said register, and be his complete indemnity in all proceedings in conformity thereto.

This act shall be in force from and after its passage.

CHAPTER CLXXXV.

An ACT to amend an act entitled "an act to amend an act entitled an act to establish a Town in the County of Mercer," and authorising the election of Trustees by the holders of Lots in Middletown.

Approved December 12, 1799.

Qualification
of voters for
trustees.

Vacancies how
filled.

Time of elec-
tion to be ad-
vertised.

Valuers of pro-
perty.

Mode of valua-
tion.

SECTION 1. *BE it enacted by the general assembly,* That all free male citizens above the age of twenty-one years, possessed of the property required by the act entitled "an act to amend an act entitled an act to establish a town in the county of Mercer," living within half a mile of said town, shall be entitled to vote for trustees. That a majority of the trustees of said town, on the death, resignation or removal of any of their trustees, may appoint a day to hold an election to supply such vacancy. And the clerk shall advertise in the most public places in the said town, at least ten days before the election, of the time and place of holding the same; and shall enter on record, the person or persons elected as trustees of said town; which said persons, so elected, shall continue in office until the next general election. The trustees shall have power to appoint fit persons to value the property of citizens of said town, and of those who live on a lot or lots adjoining; but in considering the value of said lots, the houses thereon shall not be taken into estimation, neither shall their valuation extend to the goods of wholesale or retail merchants, but be

confined to the real estate, slaves, horses, and cattle, of the citizens of said town. The trustees may appoint a collector, who shall have the same compensation and powers, in collecting the assessment due from the citizens of said town, and from such as live on a lot or lots adjoining, as sheriffs have in collecting the public revenue. And the said collector, before he enters on the execution of his office, shall give bond, with approved security, to the said trustees, or a majority of them, in double the amount of the assessment, for the faithful performance of his duty.

1799.

Power and duty
of Collector.Shall give bond
and security.

And whereas the holders of lots in Middletown, in the county of Jefferson, failed to elect trustees agreeably to the third section of the act entitled "an act concerning the establishment of towns:"

Sec. 2. *Therefore, be it enacted by the general assembly,* That the holders of lots in Middletown, in the county of Jefferson, shall be, and they are hereby authorised to elect nine trustees for said town, to continue in appointment until the next election of trustees; and that the said election be held on the first Saturday in February next, at the house of Martin Brinckman, in the said town; and the said trustees shall possess the same powers as if they had been elected at the time prescribed by law.

Lot holders in
Middletown to
elect trustees.

Their powers.

This act shall be in force from the passage thereof.

CHAPTER CLXXXVI.

An ACT to amend an act for regulating the solemnization of Marriages.

Approved December 12, 1799.

Vide ante Chapter 41, of this Volume.

SECTION 1. *BE it enacted by the general assembly,* That no clerk of a county court shall issue a license to any person, if either of the parties shall be under the age of twenty-one years, and not theretofore married, without the consent of the parent or guardian of such infant be personally given to said clerk, or due proof made to him, by the oath of one or more creditable witness, that the parent or guardian did sign and seal such certificate as is required in the above recited act.

On what authority the clerk is
to issue license.

Sec. 2. *And be it further enacted,* That the county courts shall have power to license one or more of their

Magistrates and
other persons
authorized to receive
licenses.

1799. body, to celebrate the rites of matrimony, in any county where there shall not be a sufficient number of ordained ministers of the gospel; and such justice so licensed, shall be governed by the same rules and regulations, and subject to the like pains and penalties, as ministers of the gospel are by the above recited act.

To commence. This act shall commence and be in force from and after the first day of 1800.

CHAPTER CLXXXVII.

An ACT establishing the Boundary Line between the State of Virginia and this Commonwealth.

Approved December 12, 1799.

Preamble, WHEREAS commissioners appointed by the state of Virginia and this commonwealth, did, in order to ascertain and establish the boundary line between the said states, on the fourteenth day of October last, enter into a written agreement under their hands and seals, which is in the following words, to wit:

Commissioners' agreement. "The commissioners for ascertaining and adjusting the boundary line between the states of Virginia and Kentucky, appointed pursuant to the act of separation between the two states, to wit: Archibald Stuart, General Joseph Martin and Creed Taylor, Esquires, on the part of the former, and John Coburn, Robert Johnson and Buckner Thruston, Esquires, on the part of the latter, having this day met at the forks of Great Sandy river, according to appointment, and taken into consideration the said act of separation, have, and by these presents do unanimously agree and declare, that the boundary line between the said states, is and shall be and remain as followeth, to wit: To begin at the point where the Carolina, now Tennessee, line crosses the top of the Cumberland mountain, near Cumberland Gap; thence north-eastwardly along the top, or highest part of the said Cumberland mountain, keeping between the head waters of Cumberland and Kentucky rivers, on the west side thereof, and the head waters of Powell's and Guest's rivers, and the pond fork of Sandy, on the east side thereof, "continuing"* along the said top, or highest part of said mountain, crossing the road leading over the same at the Little Paint Gap, where by some it is called the

* "Containing,"
in the enrolled
bill.

Hollow mountain, and where it terminates at the west fork of Sandy, commonly called Russell's fork ; thence with a line to be run north forty-five degrees east till it intersects the other great principal branch of Sandy, commonly called the north-eastwardly branch ; thence down the said north-eastwardly branch to its junction with the main west branch, and down main Sandy to its confluence with the Ohio. And whereas doubts have heretofore prevailed which of the main branches of Sandy the act for dividing the county of Fincastle, (which is the act referred to for the line between the two states,) meant and intended that the line should run up, and locators have been led into errors in entering their land warrants ; it is therefore unanimously further agreed between the said commissioners, that no land claims founded on entries within the forks of Sandy, or east of the Cumberland mountain on the waters of Sandy, previous to the first day of October, one thousand seven hundred and ninety-nine, on either side of the before mentioned line to be run from the end of the said Cumberland mountain to intersect the said main north-eastwardly branch of Sandy, ought to be in any wise affected by said doubts which have existed respecting the said line ; but that the said claims ought to remain valid and secure as if no such doubts had existed, or as if the said territory had been within the acknowledged limits of either state, that is to say, that all entries of land made in the offices of either state, which by this adjustment of the line falls into the other, shall be as valid as if made in the offices of that state in which the land lies ; and that it be recommended to the said states to pass mutual laws for the ratification of the said claims pursuant to the meaning and intent of this agreement between us ; and that until such laws shall be passed, this instrument shall not be in force, but shall take full effect immediately after the passage of such laws."

And whereas this commonwealth does approve of and is willing to ratify and confirm the said agreement on its part,

Be it therefore enacted by the general assembly, That the boundary line as ascertained and described in the said agreement, is hereby ratified and confirmed ; and all entries for lands made in the offices in the state of Virginia, previous to the first day of October, 1799, ly-

1799.

As to doubts respecting a certain branch of Sandy, &c.

Agreement as to certain locations made in consequence thereof.

This agreement not to be in force until ratified by a law of each state.

Preamble continued.

Boundary line ratified, &c.

Certain entries declared valid.

1799. ing in the forks of Sandy or east of the Cumberland mountain on the waters of Sandy, which by the establishment of the boundary line as aforesaid, do fall within the limits of this state, shall be as good and valid as if they had been made in the proper offices of this commonwealth.

To commence. This act shall commence and be in force so soon as the state of Virginia shall, in conformity to the aforesaid agreement, on its part, pass a similar law.

CHAPTER CLXXXVIII.

An ACT to amend an act entitled "an act to amend and reduce the several acts of assembly for the Inspection of Tobacco, into one act."

Approved December 12, 1799.

See the preface to Chap. 58, of Vol. 1.

SECTION 1. *BE it enacted by the general assembly,* That an inspection of tobacco, hemp, and flour, be established at the following places, to wit:—At the mouth of Brushy run, in the county of Woodford, on the lands of Jacob Froman, to be called and known by the name of Froman's; at Burksville, in the county of Cumberland, to be called and known by the name of Burksville; on Green river, in Logan county, at the first Bluff below the mouth of Big Barren, on the lands of Benjamin Lees, to be called and known by the name of Lees'; near to Bryant's Lick, on Green river, in the county of Lincoln, on the land of , to be called and known by the name of Bryant's Lick; at the mouth of four mile creek, in the county of Clarke, on the lands of the representatives of Nathaniel Hart, deceased, to be called and known by the name of Hart's; opposite the mouth of Ashes* creek, on the lands of Gabriel May, in the county of Shelby, to be called and known by the name of May's; at the Red-Banks, on the bank of the Ohio, in the county of Henderson, on the lands of Henderson and company, to be called and known by the name of Henderson's; on the Ohio, about one hundred poles below the mouth of Highland creek, on a tract of land the property of Benjamin Berry, to be called and known by the name of Berry's; at Taylorsville, at the mouth of Brashear's creek, on Salt river, in Shelby county, on the lands of Richard Taylor, to be called and

known by the name of Taylor's; at Westport, on the Ohio river, in the county of Henry, on the lands of Joseph Dupuy, to be called and known by the name of Westport; on Red river, on the lands of Swinney and Collins, in the county of Montgomery, to be called and known by the name of Swinney's; in Warren county, on the lands of Thomas Chapman, to be called and known by the name of Chapman's, on Drake's creek, where he now lives; at the mouth of Little river, on the lands of Nathaniel Burwell, in the county of Christian, to be called and known by the name of Burwell's; in Shepherdsville, in the county of Bullitt, on the lands of Adam Shepherd, to be called and known by the name of Shepherd's; on the south bank of Salt river, at the lower end of the Yellow Banks, opposite M'Dowell's, about half a mile below the mouth of Long Lick creek, in Bullitt county, on the lands of Matthew Walton, to be called and known by the name of Walton's; on the lands of James Stewart, at the mouth of Bailey's Big Spring branch, on the lower side of Big Barren river, in Warren county, to be called and known by the name of Stewart's; on the lands of Levi Cumpton, on Big Barren, opposite the mouth of Bay's Fork, to be called and known by the name of Cumpton's; also, an inspection of flour and hemp, at Bush's ware-house, in the county of Clarke; also, an inspection of tobacco, on the lands of Green Clay, at Stone's ferry, in the county of Madison, to be called and known by the name of Stone's; also, an inspection of tobacco, hemp, flour, and cordage, on the lands of Joel Watson, in Warren county, at the mouth of Big Beaverdam, just below the mouth of Nolin, on Green river, to be called and known by the name of Watson's; also, an inspection of flour and hemp, at the mill of John Lewis, on Jessamine creek; also, an inspection of tobacco, flour and hemp, on the Kentucky river, in south Frankfort, in the county of Franklin; also, an inspection of flour and hemp, in Bealsburg, at the ware-house of Walter Beal, in the county of Hardin; also, an inspection of flour, hemp, and tobacco, at or near the mouth of Flat creek, on Licking river, on the lands of John Fowler, in Montgomery county, to be called and known by the name of Fowler's; in the county of Madison, between Elk branch and Jack's creek, on the land of Green Clay, to be called and known by the

1799.

Westport.

Swinney's.

Chapman's.

Burwell's.

Shepherd's.

Walton's.

Stewart's.

Cumpton's.
Bush's ware-
house.

Stone's.

Watson's.
At John Lewis'
mill.South Frank-
fort.

At Bealsburg.

Fowler's.

Jack's creek.

1799. name of Jack's creek ; at the mouth of Licking, in the town of Newport, on the land of James Taylor, to be called and known by the name of Newport ; in the county of Nelson, on the lands of Charles Morehead, on the northside of the Beech fork, to be called and known by the name of Landing run ; in the county of Mason, on the land of Thomas Mills, in Lee's creek bottom, near the Ohio, to be called and known by the name of Lee's creek : which said inspections shall severally be subject to such rules and regulations as inspections of the like kind are under by law, within this commonwealth.
- Newport.
- Landing run.
- Lee's creek.
- What rules and regulations subjected to.
- Preamble.
- Part of a former law inserted which was omitted.
- Pickers' allowance.
- Their further allowance.
- To commence.
- And whereas the words "two years after the same hath been or shall be inspected, the inspectors at such ware-house" were omitted after the twentieth word in the twenty-third section of the act entitled "an act to amend and reduce the several acts of assembly for the inspection of tobacco into one act :"
- Sec. 2. *Be it further enacted*, That the said words, "two years after the same hath been or shall be inspected, the inspectors at such ware-house" shall be inserted in the twenty-third section, after the twentieth word, of the act entitled "an act to amend and reduce the several acts of assembly for the inspection of tobacco into one act."
- Sec. 3. *And be it further enacted*, That the pickers to be appointed by the respective county courts to attend any ware-house, shall hereafter be allowed twenty-five cents for every hogshead of tobacco they shall open and again enclose, to be paid by the employer or owner of such tobacco ; and where such pickers are obliged to furnish nails for the cooperage of any hogshead, they shall be entitled to and shall receive twenty-five cents in addition to the before mentioned sum for every such hogshead.
- This act shall commence and be in force from and after the passage thereof.

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CHAPTER CLXXXIX.

An ACT prescribing the mode of calculating Interest in certain cases, and for other purposes.

Approved December 13, 1799.

SECTION 1. *BE it enacted by the general assembly*, That when partial payments are made on bonds, con-

tracts or assurances, for money, goods or property, that bear or call for interest agreeably to the laws of this state, the interest that has then accrued, shall be first credited, and the balance of such partial payments shall be placed to the payment of the principal.

1799.

Sec. 2. *Be it further enacted*, That all debts founded on any specialty, bill or note in writing, ascertaining the demand, shall carry interest in the same manner as debts due on a bond or bill, with a penalty under seal; and the clerk shall calculate the interest, and issue execution therefor, in the same manner as in case of judgments upon bonds or penal bills.

This act shall commence and be in force from the passage thereof.

CHAPTER CXG.

An ACT regulating the Town of Augusta, in the County of Bracken.

Approved December 13, 1799.

SECTION 1. *BE it enacted by the general assembly*, That the trustees of the town of Augusta, shall be, and they are hereby authorised, to levy, annually, upon the holders of lots in said town, any sum not exceeding one hundred dollars, to be applied to the purpose of clearing out and keeping the streets and harbor of the said town in repair: they shall have power to appoint a collector, to take bond and security from him for the due performance of his duty, and make such regulations for collecting the tax so imposed, by distress or otherwise, as shall, by a majority of them, be thought necessary for carrying this act into effect; they shall also have power to appoint a surveyor of the streets, harbor, roads, and bridge across Little Bracken.

Trustees authorised to lay a tax on the holders of lots, and for what purpose.

To appoint a collector.

And surveyor.

Sec. 2. *Be it further enacted*, That whosoever shall be guilty of running or racing horses in the streets or highways, shooting at marks, or playing at long-bullets, shall forfeit and pay, for every such offence, the sum of two dollars. The forfeitures accruing by virtue of this act, shall be sued for in the name of the trustees of the said town, and recovered in the same manner as sums of the same amount are now recovered by law: all sums, so recovered, shall be paid to the said trustees, or any person authorised by them to receive the same, and

Forfeitures for horse-racing in the streets, &c.

How recovered and applied.

1799. shall be appropriated by them, to the purpose of keeping in repair the streets and highways of said town.

Jurisdiction of the trustees. Sec. 3. *Be it further enacted*, That the jurisdiction of said trustees, shall extend over the harbor of said town, over the streets, and over the main road leading from Augusta to Mason court-house, so far as to take in the bridge across Little Bracken, and no farther; and the titheables in the limits of said "town,"* shall not be compellable, as heretofore, to work upon the road, under the surveyors appointed by the county court; but they shall keep in repair, the before mentioned bridge across Bracken, the road leading from the town to the bridge, the streets and harbor of the town, and be exempt from working upon all other roads whatsoever.

To commence. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXCI.

An ACT forming a new County out of the Counties of Fleming, Mason and Montgomery.

Approved December 13, 1799,

Boundaries. SECTION 1. *BE it enacted by the general assembly*, That from and after the first day of June, 1800, all that part of the county of Fleming, Montgomery and Mason, included in the following boundary, to wit: Beginning at the mouth of Beaver creek, near the narrows of Licking; thence north thirty degrees east to the Mason line; thence with said line to a point opposite the head of Little Sandy; thence a straight direction to the forks of Great Sandy; thence along the division line between this state and the state of Virginia to the head waters of the main branch of Kentucky; thence down the same to the mouth of Quicksand; thence a straight line to the fifty mile tree on the state road; thence along said road in a direction to Mountsterling, to Blackwater; thence down the same to the mouth thereof; thence down Licking to the beginning, shall be one distinct county, and called and known by the name of Floyd. But the said county of Floyd shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law.

Name. When to be represented.

Sec. 2. A court for the said county shall be held by the justices thereof, on the first Monday in every month, except the months in which the courts of quarter sessions are held, after the said division shall take place, in like manner as is provided by law in respect to other counties, and as shall be by their commissions directed. ^{1799.} ^{County Courts when held.}

Sec. 3. The justices to be named in the commission of the peace for the said county of Floyd, shall meet at the house of James Brown, in the said county, on the first court day after the said division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall immediately proceed to appoint and qualify a clerk, and fix on a place for holding courts in said county ; then the court shall proceed to erect the public buildings in such place ; and until such buildings are completed, shall appoint such place for holding courts as they may think proper. ^{Where & when justices to meet and for what.} *Provided always,* that the appointment of a clerk, and of a place for erecting the public buildings, shall not be made, unless a majority of the justices of the court of said county concur therein ; but such appointment shall be postponed until some court day when a majority can be had ; but the said court may appoint a clerk *pro tempore*. ^{Power & duty of the sheriffs of Montgomery, Fleming and Mason.} And it shall be lawful for the sheriffs of the counties of Fleming, Montgomery and Mason, to collect and make distress for any public dues or officers' fees which shall remain unpaid by the inhabitants of the respective counties, at the time the division shall take place, and shall be accountable for the same in like manner as if this act had not been made. ^{Jurisdiction of the courts of said counties.} And the courts of the counties of Fleming, Montgomery and Mason, shall have jurisdiction in all actions in law or equity that shall be depending before them at the time of the division ; and shall try and determine the same, issue process, and award execution.

Sec. 4. The court of quarter sessions for the said county shall be held, annually, in the months of March, June, September and December, on the first Monday in each. ^{Quarter session courts when held.}

This act shall commence and be in force from and after the first day of June next. ^{To commence.}

1799.

CHAPTER CXCI.

*An ACT more effectually to suppress the practice of
Gambling and Duelling.*

Approved December 13, 1799.

Vide 193 acts of 1801, Chap 375.

SECTION 1. *BE it enacted by the general assembly,*
That all monies or other property, exhibited for the pur-
pose of alluring persons to bet at any game, or horse-
race, or to make any bet whatsoever, and all monies
actually staked or betted, shall be liable to seizure by
any magistrate or magistrates, or by any other person
or persons, under a warrant from a magistrate, where-
soever the same may be found; and all such monies, so
seized, shall be accounted for and paid by the person
or persons making the seizure, to the court of the coun-
ty, or corporation, wherein the seizure shall be made,
and applied by the court, in aid of the county levy, de-
ducting thereout, one half, to be paid to the person or
persons making the seizure. And all property, so seiz-
ed, shall be sold, under the direction of the court of the
county in which the seizure shall be made, and the mo-
ney arising therefrom, applied in the same manner as
other monies seized under this act, subject to the same
deduction, to be paid to the person making the seizure.

Money betted at
any game or o-
ther, liable to
seizure, and
how seized and
applied.

One half to the
person making
the seizure.

Similar as to
property seiz-
ed.

Penalty on any
person who suf-
fers any species
of gambling in
his house.

How recovered
and applied.

Sec. 2. *And be it further enacted,* That any person
who shall suffer any of the games played at the tables
commonly called A. B. C. faro-bank, or E. O. tables, or
any other game whatever, at which any money or pro-
perty is won or lost, to be played in his or her house, or
in a house of which he or she hath at that time the use
or possession, shall, for every such offence, forfeit and
pay the sum of one hundred dollars, to be recovered in
any court having competent jurisdiction thereof, by any
person suing for the same, to be applied in the same man-
ner as monies seized under this act, subject to the same
deduction, to be paid to the person suing for the same.

Sec. 3. *And be it further enacted,* That any person or
persons, who shall oppose the seizure of any money or
property as above described, or who shall rescue, or at-
tempt to rescue, or who shall take or carry away the
same, after such seizure is made by any person properly
authorised, shall be liable to a penalty of one hundred
dollars, to be recovered in any court having competent

Penalty on any
person rescuing
money or pro-
perty seized a-
gainst law.

jurisdiction, one half in aid of the county levy, and the other half for the use of the person suing for the same. 1799.

Sec. 4. *And be it further enacted*, That all monies, or other property, which shall be staked or betted on any occasion whatever, shall be forfeited; and any person having the same in possession, whether he may have lost or won, or obtained it by any other means, shall be compellable to pay the same, by a suit in any court having competent jurisdiction, and may be recovered by any person suing for the same, to be applied in the same manner as other monies or property seized under this act.

All money or property staked or betted to be forfeited, &c. the possessor to pay the same, and how compelled to do so.

How applied when recovered.

Sec. 5. *And be it further enacted*, That the judges of the district and quarter session courts are hereby empowered to execute this and all other laws, for the purpose of suppressing gaming, in the same manner as justices of the peace. And the presiding judge or justice of said courts shall constantly give this act in charge to the grand juries of their courts, at the time such grand juries shall be sworn. And when any fine or penalty shall be incurred in consequence of a presentment by a grand jury, one half shall be applied in aid of the county levy, and the other to the use of the person or persons giving the information.

Judges of the district & quarter session court to execute this act.

Shall give it in charge to the grand jury.

Fines incurred on presentment how applied.

Sec. 6. *And be it further enacted*, That if any person within this commonwealth, shall challenge, by word or writing, the person of another to fight at sword, pistol, or other deadly weapon, such person, so challenging, shall forfeit and pay, for every such offence, being thereof lawfully convicted, in any court of record within this commonwealth, by the testimony of one or more witnesses, or by the confession of the party offending, the sum of five hundred dollars, or shall suffer twelve months imprisonment, without bail or mainprize. And the person who shall accept of any such challenge, shall, in like manner, upon conviction, forfeit and pay the sum of two hundred and fifty dollars, or suffer such imprisonment, for and during six months; and if any person shall willingly and knowingly, carry and deliver any written challenge, or shall verbally deliver any message, purporting to be a challenge, or shall consent to be a second in any such intended duel, and shall be thereof legally convicted, as aforesaid, he or they so offending, shall, for every such offence, forfeit and pay the sum of

Penalty on one person for challenging another to fight a duel.

Penalty on the person who accepts a challenge.

On any person conveying a challenge from one person to another, or becoming a second.

1799. one hundred and fifty dollars, or suffer three months imprisonment, as aforesaid : and moreover, the person challenging, and the person accepting the challenge, the person delivering the same, and the person consenting to become a second to either of the parties, shall, for every such offence, be excluded from office and from suffrage, within this commonwealth, for the space of seven years after conviction.

And shall be excluded from office and suffrage.

Fines for duelling, how recovered and how applied.

By whom collected.

Duty of clerk.

Sec. 7. Any fine which may be incurred under this law, so far as it respects duelling, shall be recoverable in any court in this commonwealth, having competent jurisdiction thereof, and shall be applied, one half to the use of the commonwealth, and the other to the use of the person suing for the same ; and shall be collected by the sheriff of the county in which the judgment shall be obtained ; and the clerk of such county shall certify the amount of any such judgment to the auditor of public accounts.

Sec. 8. This act shall commence and be in force from To commence, and after the first day of June next, except so far as it respects billiard tables, on which this act shall not have its operation until the first day of November next, at which time, the whole of this act shall be in force.

CHAPTER CXCIIL.

An ACT directing the Register to issue certain Grants, and giving further time to return Plats and Certificates.

Approved December 14, 1799.

See the prælection to Chap. 38, of Vol I.

Preamble.

WHEREAS the register of the land-office is in doubt to whom grants ought to issue, where unpatented lands have been sold by sheriffs for the non-payment of taxes :

Register to issue patents.

Sec. 1. *Be it therefore enacted by the general assembly,* That when any purchaser of lands under the revenue laws of this commonwealth, shall return into the register's office the plat and certificate of survey, accompanied with such evidence of the sale and purchase as is directed by the said laws, that it shall be the duty of said register to receive and file the same, and to issue a grant to the purchaser therefor ; but nevertheless nothing herein contained shall be construed so as to confirm any

illegal sale of land, under the revenue laws of this commonwealth.

1799.

Sec. 2. *Be it further enacted*, That the further time of one year, from and after the end of the present session of the general assembly, be allowed the owners of plats and certificates of survey made within the time prescribed by law, to return the same to the register's office ; in which time the register of the land-office shall receive all plats and certificates of survey, although not returned within the time heretofore limited by law ; and such land shall not be considered forfeited or liable to forfeiture on that account.

Further time
given to return
plats and certi-
ficates.

This act shall commence and be in force from and after the twentieth day of December, in the present year.

To commence:

CHAPTER CXCV.

An ACT to establish an Inspection of Tobacco, Hemp and Flour, at the mouth of Cox's Creek, in the County of Bullitt.

Approved December 16, 1799.

See the prelection to Chap. 58, of Vol. I.

BE it enacted by the general assembly, That there be an inspection of tobacco, hemp and flour, established in the county of Bullitt, on the lands of Henry Crist, at the mouth of Cox's creek, and called and known by the name of Cox's creek inspection ; and the said inspection shall be under the same rules and regulations that other inspections are in this state.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXCV.

An ACT to amend an act entitled " an act concerning the Militia.

Approved December 18, 1799.

See the observations on Chap. 17, of Vol. I.

CHAPTER CXCVI.

An ACT authorising and directing the Surveyor of Warren County to record certain Plats and Certificates.

Approved December 12, 1799.

WHEREAS it is represented to the general assembly, that Rowland Madison, late surveyor of Warren

1799. county, at his death left several plats and certificates returned and signed by his deputies, which were not recorded : therefore,

Sec. 1. *Be it enacted by the general assembly,* That the present surveyor of Warren county, be, and he is hereby authorised and directed, to examine and record the plats and certificates so left, which shall be as valid as if done by said Rowland Madison.

Sec. 2. *And be it further enacted,* That for recording said plats and certificates, the surveyor shall be paid the sum of twenty-five cents, by the party requiring the same.

This act shall be in force from and after the passage thereof.

CHAPTER CXCVI.

An ACT establishing the Boundary of Lots in the Town of Shelbyville, and for other purposes.

Approved December 18, 1799.

Preamble.

WUEREAAS it is represented to the present general assembly, that the trustees and lot-holders of the town of Shelbyville, labor under great inconvenience, owing to an error in the measurement of lots ; for remedy whereof,

Sec. 1. *Be it enacted by the general assembly,* That Shelbyville, the south east corner of the court-house, in the said town, shall be, and the same is hereby established, as the beginning thereof established, and the standard of the beginning, and that the said corner shall be the western extremity of the cross-street, which passes through the public square, from north to south ; and that the northern extremity of the main-street, which passes through said square from east to west, shall be twenty-five feet four inches south of said corner of the court-house ; and that the said cross-street, passing through said public square, from north to south, shall be thirty-two feet wide ; and all the rest of the cross-streets, passing from north to south, shall be thirty-three feet wide. And that the said main-street, passing from east to west through the public square, shall be sixty feet wide, and all the rest of the streets extending from east to west, shall be fifty feet wide ; and that all the lots on the east side of the said cross-street, which passes from north to south, through the public square, shall

Course & width of main street & other streets.

Size of certain lots.

remain at ninety-nine feet in width from east to west, and two hundred and twenty-four feet in length from north to south, except lots No. 24 and 21, which shall remain one hundred and twelve feet in length. And that all the lots which lie west of said cross-street, which passes north and south, through the public square, shall be one hundred feet in width from east to west, and two hundred and twenty-four feet in length, from north to south, except lots No. 38 and 39, which shall remain at ninety-nine feet in width, and except also, lots No. 25 and 40, which shall remain at one hundred and twelve feet in length, from north to south, and except also, lot No. 37, which shall be one hundred and two feet in width, from east to west, and two hundred and twenty-four feet in length, from north to south; and that all subdivisions of lots hereby "increased"* in width, shall stand in the same proportion to the width of its lot, as heretofore. And the trustees of the said town shall be, and they are hereby authorised and directed to have a plan of the said town made out and recorded agreeably to the regulation aforesaid, so far as the same applies, and the rest of said plan agreeably to the former. And that all the land included in each lot, according to the regulations of this act, shall be, and the same is hereby vested in its lot-holder, as fully and completely as if the same had been originally sold and conveyed by the trustees, and they had been by law authorised to do so.

This act shall commence and be in force from the passage thereof.

1799.

Lots subdivided

"Measured,"
in the enrolled
bill.Trustees au-
thorised to have
a plan of said
town made out.Land included
in said lots to
be vested in the
holder, &c.

To commence.

CHAPTER CXCVII.

An ACT for erecting a new County out of the County of Hardin.

Approved December 17, 1798.

WHEREAS it has been represented to the general assembly, that an error hath been made in printing the first section of the act entitled "an act for erecting a new county out of the county of Hardin," which passed the seventeenth day of December, 1798: therefore,

Resolved, That the public printer be directed to print the said section, to be annexed to the laws to be by him printed, which shall pass during the present session of the general assembly.

Approved December 19, 1799.

BE it enacted by the general assembly, That from and after the first day of July next, all that part of the coun-

1799.

ty of Hardin, that is included in the following bounds, viz : Beginning on the Ohio river, at the mouth of Blackford's creek ; thence up the same to the head of the south-east fork that heads opposite the head of Harris's fork of Rock Lick creek ; thence across the dividing ridge to said Harris's fork ; thence down the same to Rock Lick creek ; thence down the same to Rough creek ; thence a straight line to the Flat Clay Lick on Bear creek, and down the same to Green river, and down Green river to the Ohio, and up the Ohio to the beginning, shall be one distinct county, and called and known by the name of Ohio. But the said county of Ohio, shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeable to the ratio that shall hereafter be established by law.

CHAPTER CXCVIII.

An ACT vesting a tract of Land in Trustees, for the purpose of promoting Manufactories.

Approved December 19, 1799.

Six thousand acres granted ; to whom, & on what conditions.

SECTION 1. *BE it enacted by the general assembly,* That the following three persons, Samuel Hopkins, Harry Toulmin, and David Walker, be, and they are hereby constituted a body corporate and politic, for the purposes herein after mentioned : they shall have full power and authority to locate, at any time within ten months from the passage of this act, any quantity of vacant or unappropriated land, south of Green river, not exceeding six thousand acres, in tracts of not less than two hundred acres each, and laying as nearly in a square as the interfering of prior claims will admit of ; which they shall cause to be surveyed, and plats and certificates of such surveys to be returned within one year of the time such locations are made, to the register's office : *Provided however,* That no such location shall include any bank of ore, salt lick or salt spring, or any lands set apart for any Indian tribe, or any tract of two hundred acres on which any settler may have an improvement, and shall reside at the time such location is made : and *provided, moreover,* that if any survey should, by

Not to include any bank of ore, salt licks, or springs.

mistake, interfere with any prior claim, twelve months shall be allowed to remove such survey into any vacant land as aforesaid.

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Sec. 2. The trustees aforesaid, shall be authorised to appropriate one-sixth of the said land to any person or persons who shall locate the same; and shall cause to settle on the remaining part, on or before the first day of January, 1803, five settlers to every thousand acres, being widows, free male persons above the age of eighteen years, or other free persons holding slaves; each of whom shall be entitled to two hundred acres of land surveyed as aforesaid, and shall pay for the same; and likewise for his proportion of what shall be granted to the locator, the sum of forty dollars for every hundred acres. The said forty dollars shall be paid by the said settler into the public treasury, by four equal annual instalments, with lawful interest from the first day of January, 1803: *Provided however*, That no part of the principal shall be paid, till the same be required by law; and the state shall have a perpetual lien on the said tracts, severally, for the payment of the said interest and principal.

Trustees allowed
to give 1-6 for
locating.
Remainder to
be settled; by
whom & when.

Price
lands. of the
How and when
to be paid.

Sec. 3. Two-thirds of the said settlers, shall be manufacturers of wool, cotton, brass, or iron, and they shall really, and with good faith, exercise one of those occupations on the said land, for and during the term of two years, (except in case of death or sickness,) or else be considered, to all intents and purposes, as no settlers; the remaining third part of the settlers shall reside thereon one year at least, and shall clear, fence, and cultivate, as much land as will amount to five acres each, or else be accounted no settlers; and their lots shall, in either case, revert to the commonwealth: *Provided however*, That if any settler should erect a building for manufacturing purposes, worth one thousand dollars, or should employ, besides himself, for the space of two years, in the manufactories aforesaid, two persons above the age of twelve years, the said trustees shall be authorised to convey to him, as much land as two settlers are entitled to by this act, and he shall be regarded as such accordingly.

Two-thirds of
the settlers to
be manufactu-
rers.

The residue to
to clear 5 acres,
&c.

Or forfeit their
lots.

Provided.

Sec. 4. And in order to ascertain how far these provisions are complied with, evidence may be given thereof in either court of the county wherein the settlers may

How proof is
to be made of
a compliance
with the provis-
ions of this act.

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Register to issue
patents.

severally reside ; and on a copy of the record, stating the facts as they have been made to appear, to the satisfaction of the court, being presented to the register, together with the treasurer's receipts for the money due by this act, he shall issue patents for the lands herein granted, or so much thereof as the settlers or locators aforesaid, may be entitled to, agreeably to this act. But no patent shall issue in favor of any locator, unless it be certified by the county court, that there were, at the time required by this act, on the land located by him, so many actual settlers of the description aforesaid, as it is herein before provided there shall be.

To commence. This act shall be in force from the time of its passage.

CHAPTER CXCIX.

An ACT for apportioning the Representation among the several Counties, and for laying off the State into Senatorial Districts.

Approved December 19, 1799.

Apportionment
of representatives.

SECTION 1. *BE it enacted by the general assembly,* That until it shall be altered by the legislature, the house of representatives shall be composed of sixty-two members, to be elected from the several counties, agreeably to a ratio of one member for every five hundred qualified electors within this state, that is to say, the county of Jefferson shall elect two members ; the county of Shelby, two members ; the counties of Henry and Gallatin, one member ; the county of Bullitt, one member ; the county of Nelson, three members ; the county of Hardin, one member ; the county of Green, two members ; the county of Washington, three members ; the counties of Muhlenburg and Ohio, one member ; the counties of Livingston and Henderson, one member ; the county of Warren, one member ; the county of Logan, two members ; the county of Christian, one member ; the county of Cumberland, one member ; the county of Barren, one member ; the county of Pulaski, one member ; the county of Lincoln, two members ; the county of Mercer, three members ; the county of Garrard, two members ; the county of Madison, three members ; the county of Fayette, four members ; the county of Jessamine, one member ; the county of Bourbon, four members ; the county of Fleming, two members ; the county of Clark,

two members ; the county of Montgomery, two members ; the county of Scott, two members ; the county of Woodford, two members ; the county of Franklin, one member ; the county of Harrison, two members ; the county of Bracken, one member ; the counties of Boon, Campbell and Pendleton, one member ; and the county of Mason, four members.

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Sec. 2. If before the next apportionment of representation shall be made by the legislature, a new county shall be erected, it shall be considered, for the purpose of representation, as a part or parts of the county or counties from which it shall be taken.

Provision in
case of new
counties.

Sec. 3. *And be it further enacted*, That until it shall be altered by the legislature, the county of Fayette shall form one senatorial district, the county of Montgomery one, the county of Bourbon one, the county of Mason one, the county of Clark one, the county of Scott one, the county of Fleming one, the counties of Harrison and Bracken one, the counties of Campbell, Pendleton and Boon one, the county of Woodford one, the counties of Franklin and Gallatin one, the counties of Jessamine and Garrard one, the county of Madison one, the county of Mercer one, the county of Lincoln one, the counties of Shelby and Henry one, the county of Nelson one, the county of Washington one, the county of Jefferson one, the counties of Bullitt and Hardin one, the county of Green one, the counties of Cumberland and Pulaski one, the counties of Barren and Warren one, the counties of Logan and Christian one, and the counties of Livingston, Henderson, Muhlenburg and Ohio one.

Senatorial dis-
tricts.

Sec. 4. *And be it further enacted*, That in order to ascertain the true state of the polls, when two or more counties are annexed together for the purpose of choosing a representative or senator, the sheriffs shall meet at the court-house of the county first named, on the sixth day after the election shall have commenced, and having ascertained by faithful addition the amount of their respective polls, shall make return in the form prescribed by law, of the person or persons elected.

Mode of ascer-
taining the state
of the polls.

This act shall commence and be in force from and after the passage thereof.

To commence.

1799.

CHAPTER CC.

An ACT authorising the County Courts to appoint certain Officers, agreeably to the Constitution lately adopted.

Approved December 19, 1799.

BE it enacted by the general assembly, That it shall be the duty of the respective county courts, as often as it shall be necessary, within their counties, to appoint inspectors, collectors and their deputies, surveyors of the highways, constables, and county jailors. Any person so appointed, shall, before he enters on the duties of his office, take such oath and enter into such bond with security, as may be required by law, and shall continue in office agreeably to the rules and regulations prescribed by law: *Provided,* that the appointment of all jailors shall be for and during the pleasure of the court by whom they are appointed.

This act shall commence and be in force from and after the first day of June next.

CHAPTER CCI.

An ACT to amend the several acts regulating proceedings in Chancery.

Approved December 19, 1799.

See the preface to Chap. 273, of Vol. I.

Bill to be filed with the clerk.

And a copy to be delivered to the defendant.

Also of an amendatory bill.

No attachment necessary.

SECTION 1. *BE it enacted by the general assembly,* That no *subpoena* in chancery shall issue from any court, until the bill is filed with the clerk thereof, whose duty it shall be to copy the same, and deliver the copy to the person applying for the *subpoena*; which copy shall be delivered to the defendant, by the officer or person serving the said *subpoena*, which shall be endorsed on the back thereof. And if there be more than one defendant, the said copy shall be delivered to him who is first named in the *subpoena*, if he be a resident of the state; if he is not, to the one next named in the *subpoena*, who is a resident.

Sec. 2. *And be it further enacted,* That where a bill is amended, a copy of the amendatory bill shall, in like manner, be delivered to the defendant or defendants. It shall not be necessary that an attachment to procure an

appearance, or an answer, of the defendant, shall issue ; but in all cases where the *subpoena* is returned executed, and a copy of the bill has been left with the defendant or defendants conformably to this act, the complainant may proceed to take his bill *pro confesso*, as in cases of attachments heretofore returned executed.

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Bill to be taken *pro confesso* on return of *subpoena* executed.

Sec. 3. *And be it further enacted*, That where it is required that notice shall be given of the time and place of making application for an injunction, a copy of the bill shall be delivered to the defendant, his attorney or agent, at the time of such notice. No injunction shall be granted to any judgment at law, for a greater sum than that which the complainant shall shew himself not to be equitably bound to pay, and so much as shall be considered necessary to cover the costs. No injunction shall be granted until the party shall release all error in the proceedings at law, which are prayed to be enjoined. If the injunction is dissolved in whole or in part, the complainant shall pay ten per cent. exclusive of legal interest, upon the sum for which it shall be dissolved, besides costs; and the clerk of the court in which the judgment at law was recovered, shall issue an execution for the same, when he issues an execution upon the said judgment.

Upon notice for injunction, copy of bill to be left.

Rule in granting injunctions.

Errors at law to be released.

Complainant to pay 10 per cent. besides interest, if his injunction is dissolved.

Sec. 4. *And be it further enacted*, That wherever affidavits are taken either to support or dissolve an injunction, the party taking shall give the adverse party reasonable notice of the time and place of taking the same, and the clerk of the court in which the suit shall be depending, shall issue to either party *subpoenas* to procure the attendance of the witnesses at the time and place appointed; and such affidavits, taken as aforesaid, shall and may be read as evidence on the final hearing of the cause in which they may be taken, in the same manner, and under the same restrictions as depositions taken according to law.

Notice to be given of taking affidavits.

Such affidavits evidence on final hearing.

This act shall commence and be in force from and after the passage thereof.

To commence.

1799.

CHAPTER CCH.

An ACT for the relief of Securities for certain Public Officers.

Approved December 19, 1799.

Securities for
certain public
officers may be
discharged.

In what man-
ner.

Securities for
county court
clerks may be
relieved.

Notice proven,
to be recorded,
&c.

Clerk to give
further security
or vacate his
office, &c.

Similar proce-
dings as to o-
ther clerks.

Proceedings as
to securities for
all other public
officers.

Notice against
any public offi-
cer absent from
the state, how
to be given.

SECTION 1. *BE it enacted by the general assembly,*
That it shall be lawful for any person or persons, their
heirs, executors or administrators, who now are, or here-
after may become security or securities for any clerk of
a court, surveyor of a county, or any other public officer,
who holds or may hold an office during good behaviour,
to be relieved or discharged from such suretyship in the
following manner :—In the case of a clerk of a county
court, such security or securities shall give to such
clerk at least thirty days notice in writing, notifying to
him therein, that he will not continue longer as his secu-
rity, and requiring him to appear at the county court to
be held for the county of which he is clerk, and at the
time in said notice mentioned, and give other security
for the performance of the duties required of him by
law.

Sec. 2. The said notice upon being duly proven to
the court, shall be entered upon the records thereof ; and
such security shall thenceforth be totally discharged and
exonerated from his securityship : whereupon the said
clerk shall give such other security, as shall be approved
of by the court ; and on failing so to do, his office shall
be vacated, and another clerk shall be appointed accord-
ing to law. The same mode of proceeding may be pur-
sued against the clerks of any other courts within this
commonwealth ; and the said courts shall be governed
thereby accordingly.

Sec. 3. In all other cases of public officers, coming
within the purview of this act, it shall be lawful for their
security or securities, to notify them to appear as afore-
said before the court in which such securities were
bound ; and on their failing so to do, and giving other
security as aforesaid, their offices shall be vacated, and
others appointed in their stead agreeably to law.

Sec. 4. Where any public officer as aforesaid shall ab-
sent himself from this state for six months successive-
ly, so that notice cannot be served on him, the insertion
of such notice for four weeks successively, in the ga-
zette of the public printer, shall be sufficient.

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Sec. 5. Nothing in this act contained shall be construed to relieve or discharge such securities from any damages which have arisen, or may hereafter arise, on account of the misfeasance, nonfeasance or malfeasance of the public officers for whom they stand bound, prior to the time of their exoneration as aforesaid. ^{1799.} ^{How far the provisions of this act shall not extend.}

This act shall commence and be in force after the first day of June next. ^{To commence:}

CHAPTER CCIII.

An ACT to amend the act entitled "an act for the division of Fayette County."

Approved December 19, 1799.

WHEREAS it is represented to this general assembly, that disputes have arisen between the inhabitants of the counties of Fayette and Jessamine, in ascertaining the true line of division; and also, in the collection and manner of appropriating that part of the levy which was levied by the county court of Fayette, on the inhabitants now in the county of Jessamine; for remedy whereof, ^{Preamble.}

Sec. 1. *Be it enacted by the general assembly, That* the dividing line run by the surveyor of Jessamine county, is hereby ratified and confirmed. ^{What line established.}

Sec. 2. *And be it further enacted, That* the county courts of Fayette and Jessamine, shall, on their respective parts, in the month of March next, appoint, each, a commissioner, who are hereby authorised to examine the records of Fayette county, and enquire into the situation of levies and appropriations heretofore made by the county court of Fayette; and if upon such examination, it shall appear to the said commissioners, that there is, or ought to be, a deposit, amounting to more than the claims given into the said county court of Fayette, the said court of Fayette is hereby required to pay to the court of Jessamine county, for the use of said county, their proportion of said deposit. ^{County courts to appoint commissioners. For what purpose.}

This act shall commence and be in force from and after the first day of February next. ^{To commence:}

1799.

CHAPTER CCIV.

An ACT for the division of Lincoln County.

Approved December 19, 1799.

Boundaries.

Name.

County Courts
when held.Where & when
justices to meet
and for what.

Provide.

Each court to
appoint a clerk.Quarter session
court when held

SECTION 1. *BE it enacted by the general assembly,* That from and after the first Monday in June next, all that part of the county of Lincoln, included in the following bounds, to wit: Beginning where the Pulaski line strikes the Tennessee line, and with said Tennessee line east to the top of the Cumberland mountain; thence along the said mountain to the line of Madison county, and with the same to a point due east of the mouth of the branch of Kentucky river that the wilderness road goes down; thence up the said branch to the said road; thence with the said road to the aforesaid Madison line, and with the same to the head of Rockcastle river, and down the said river to the Pulaski line, and with Pulaski line to the beginning, shall be one distinct county, and called and known by the name of Knox. A court for the said county shall be held by the justices thereof, on the fourth Monday in every month, in which the courts of quarter sessions are not hereafter directed to be held.

Sec. 2. The justices to be named in the commission of the peace for the said county of Knox, shall meet at the house of John Logan, in the said county, on the first court day after the said division shall take place; and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall proceed to appoint and qualify a clerk, and fix on a place for holding courts in said county, at or as near the centre thereof, as situation and convenience will admit; and thenceforth the said courts shall proceed to erect the necessary public buildings at such place; and until such buildings be completed, to appoint such place for holding courts as they shall think proper: *Provided always,* that the place for erecting public buildings shall not be fixed on, unless a majority of the justices of both courts of the said county shall concur therein. Each court shall appoint its own clerk, a majority of such court concurring therein; but a majority of those present on any court day, may appoint a clerk *pro tempore*.

Sec. 3. *And be it further enacted,* That the court of quarter sessions for said county of Knox, shall be held,

annually, in the months of March, May, August, and November. 1799.

Sec. 4. It shall be lawful for the sheriff of Lincoln to collect and make distress for any public dues and officers' fees, which shall remain unpaid by the inhabitants thereof, at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made. And the courts of the county of Lincoln shall have jurisdiction in all actions and suits, either in law or equity, which shall be depending before them at the time of such division, and shall try and determine the same, issue process and award execution thereon.

CHAPTER CCV.

An ACT to explain and amend the act entitled "an act to reduce into one, the several acts for the better regulating certain Officers' Fees."

Approved December 19, 1799.

WHEREAS doubts have arisen in construing the act entitled "an act to reduce into one, the several acts for the better regulating and collecting officers' fees:"

Sec. 1. *Be it enacted by the general assembly,* That there shall be paid, annually, to each of the clerks of the district courts and courts of quarter session, within this commonwealth, for their extra services, as specified in the said recited act, the following sums, to wit: to each clerk of the district courts, any sum not exceeding forty dollars; to each clerk of the courts of quarter sessions, any sum not exceeding thirty dollars; which shall be paid out of the public treasury, on the warrant or warrants of the auditor of public accounts, which he is hereby directed to issue in favor of the respective clerks, on their producing to him a certificate from the court to which such clerk may belong, certifying that such allowance hath been made him by the court.

Sec. 2. *And be it further enacted,* That it shall be lawful for the constables hereafter to demand and receive the following fees and commissions, as a compensation for their services in executing all executions which may legally come to their hands, to be chargeable to the person or persons against whom such execution may issue, viz: on each execution, they may demand the

1799. sum of twenty-five cents, and a commission of five per centum on all sums exceeding five dollars, which may be contained in such execution. And whereas it appears, that many constables within this commonwealth, have heretofore received fees or commissions agreeable to the above allowance, conceiving themselves legally entitled thereto: therefore, *be it enacted*, that they shall not be subject to reimburse the same, nor to pay any fines, forfeitures or penalties, for so doing. And whereas, in the bill entitled "an act to reduce into one, the several acts for the better regulating and collecting certain officers' fees," a mistake has taken place in the eleventh section, in annexing a fee of one dollar and four cents to the thirteenth article of services, enumerated in the table of sheriffs' fees: *Be it therefore enacted*, that the said act shall be so far amended, as that the said one dollar and four cents shall be stricken out of said law, and no longer considered as annexed as the fee for the services in the said article enumerated; but the fee shall hereafter be and remain as expressed in the body of the said thirteenth article.

Recital as to fees heretofore taken by the constables.

Recital as to sheriff's fees.

Fees taken from justices in certain cases.

Clerks to live at the seat of justice.

Auditor to issue warrants to certain clerks for certain services.

Sec. 3. *And be it further enacted*, That so much of all and every law or laws heretofore in force, allowing fees to justices of the county courts, shall be repealed and of no effect, after the first day of June next, except so much as allows fees to justices attending the taking depositions, and swearing appraisers to the estates of deceased persons, which shall be four shillings and six pence per day.

Sec. 4. *And be it further enacted*, That the several clerks of the quarter session and county courts, now in office, or who shall hereafter be appointed, shall, from and after the first day of June next, keep their respective offices at, or within one half mile of the court-house of the county to which they may respectively belong, or so soon thereafter, as the county courts of their respective counties, a majority of the justices thereof concurring, shall assign or provide a room for that purpose; and no clerk shall be allowed to charge any fee or fees for services by him rendered, so long as he shall fail to comply with the directions and provisions of this act.

Sec. 5. *And be it further enacted*, That the auditor shall issue his warrants in favor of the clerks of the district courts and courts of quarter sessions, and the clerk

of the general meeting of judges of the district courts, for such sums as may be certified to be due to them by their respective courts for any *ex officio* services rendered by them, prior to the twenty-second day of March, one thousand seven hundred and ninety-nine, and subsequent to the twenty-second day of December, one thousand seven hundred and ninety-eight; having reference to the allowance made to them for such services in the act before mentioned.

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CHAPTER CCVI.

An ACT supplementary to the act amending the Penal Laws of this Commonwealth.

Approved December 20, 1799.

Vide Chapter 4, of this Volume, and the notes.

SECTION 1. *BE it enacted by the general assembly,* ^{When the act shall be in force.} That the act entitled "an act to amend the penal laws of this commonwealth," shall be in force from and after the first day of May next, any law or laws to the contrary notwithstanding.

Sec. 2. The salary of the keeper of the jail and penitentiary house in the said act mentioned, shall be three hundred and thirty-three and a third dollars per year; to commence from the time he shall enter upon the duties of his office. One deputy or assistant, may, ^{Keeper's salary.} if judged necessary, be appointed by the keeper, ^{Deputy and his salary.} in conformity to the said act, also shall be allowed at the rate of one hundred dollars per annum.

Sec. 3. The solitary cells of the said penitentiary house shall be constructed in such part of the building, ^{How the cells are to be constructed.} as the directors, with the approbation of the governor, may deem most consistent with the general plan thereof.

This act shall be in force from the passage thereof. ^{To commence:}

CHAPTER CCVII.

An ACT to repeal in part the act concerning Weights and Measures, and for other purposes.

Approved December 20, 1799.

Vide Chapter 121, of this Volume.

BE it enacted by the general assembly, That so much of the act entitled "an act concerning weights and mea-

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asures," as directs the governor to furnish a standard of weights and measures for each county in this commonwealth, shall be, and the same is hereby repealed. *Provided however*, that each county court may, when they judge proper, furnish such standard at the expence of such county; and the secretary is hereby required to prove and stamp the same when required by order of the said county court.

This act shall commence and be in force from the passage thereof.

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CHAPTER CCVIII.

An ACT directing certain Surveyors to transcribe the Books of their Offices, and for other purposes.

Approved December 20, 1799,

Preamble.

WHEREAS it will be of great public convenience, as well as safety, that true copies of the original entries of all lands entered for in this commonwealth under the laws of Virginia, should be deposited in the register's office :

Surveyors to transcribe their entry books, &c. within what time.

Sec. 1. *Be it therefore enacted*, That all the surveyors within this commonwealth, (those of the Virginia continental and state lines excepted,) in whose possession there may be any books of original entries for lands within this state, shall, within eight months, transcribe such original entries in a fair legible hand, and in good books, well bound in calf; and shall deposit the same with the register of the land-office, certified under the hand and seal of such surveyor, that the same are truly copied.

Duty of the surveyors to be very accurate in their transcripts

In transcribing such entries, it shall be the duty of said surveyors to observe perfect accuracy, in making exact and literal copies, in dates, spelling, punctuation, marginal notes, and every other respect; noting also in the margin, all interlineations or alterations which appear in the body of the entry.

If the surveyors fail to transcribe their books, the governor shall appoint some other person to do the same, &c.

And if any surveyor shall neglect or refuse to make such transcript as aforesaid, within eight months from the passage of this act, it shall and may be lawful for the governor to appoint a proper person to transcribe the same; and such surveyor is hereby directed to permit the person so appointed, the free use of his entry books, during the time such entries are transcribing; and such person shall certify the tran-

script so made, on oath, and deposit the same with the register of the land-office. 1799.

Sec. 2. *And be it further enacted*, That there shall be paid out of the public treasury, to the surveyor, or other person entitled to the same, three cents for every entry by him transcribed, together with the costs of the books in which they are inserted; and the auditor of public accounts is directed to issue his warrants accordingly. Compensation for transcribing entry books. How paid.

Sec. 3. *And be it further enacted*, That such of the surveyors who have transcribed their books of entries agreeably to a former law of this state, are excepted out of the provisions of this act; but they are hereby required, on or before the first day of June next, to deposit the original entry books of their respective offices with the register of the land-office, and retain the copy for the use of their respective offices. A copy of any of said entries taken from the books to be deposited as aforesaid in the register's office, and attested by the register, shall be legal evidence in any court of record within this commonwealth. The surveyors who have transcribed their books to deposit the originals with the register, and to retain the copy. Copy taken from such transcripts to be legal evidence.

And whereas a copy of the commissioners' books, together with a copy of the entries made with the surveyors of the counties of Fayette, Bourbon and Nelson, are lodged with the clerk of the court of appeals, and it is deemed right and proper that the same, with all other title papers relating to land titles, should be lodged with the register of the land-office; therefore, Recital.

Sec. 4. *Be it enacted*, That the clerk of the court of appeals, be, and he is hereby directed, forthwith to lodge the books of entries as aforesaid with the register of the land-office. And the register, for every copy of an entry, may demand and receive from the person obtaining the same, seventeen cents; which he shall account for, and pay into the treasury of this commonwealth, in the same manner as other public monies received by him. Clerk of the court of appeals to lodge certain books in his office with the register.

This act shall commence and be in force from the passage thereof. To commence.

CHAPTER CCIX.

An ACT for incorporating the Frankfort Bridge Company.

Approved December 21, 1799.

WHEREAS it has been represented to the present general assembly, that the erecting a bridge across the Preamble.

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Kentucky river, from the end of Ann street to South Frankfort, will be of great public utility, and there is reason to believe that such bridge will be undertaken by an association of citizens, if proper encouragement is given by the legislature :

Commissioners
appointed.

Sec. 1. *Be it therefore enacted by the general assembly,* That Christopher Greenup, Daniel Weisiger and William Trigg, gentlemen, or either of them, be appointed commissioners, to open a book of subscription in the town of Frankfort, which shall begin in the following manner, to wit : " We whose names are hereto subscribed, do promise to pay to the president and directors of the Frankfort Bridge Company, the sum of four hundred dollars for every share of stock in said company set opposite to our respective names by us subscribed, in such manner and proportion, and at such times as shall be prescribed by the act for incorporating the said president, directors and company: Witness our hands," which shall be plainly subscribed by every person becoming a member of the company, with the date of such subscription prefixed.

Form of sub-
scription book.

President and
directors when,
how & by whom
to be chosen.

Sec. 2. *And be it further enacted,* That as soon as forty shares shall be subscribed for, either of the commissioners aforesaid shall give notice in the most public manner, for the share-holders to assemble in Frankfort, to elect seven of their members to act as president and directors of the said company ; which notice shall express the time and place of holding the election, and shall not be in less than fifteen days, nor more than forty days from the time the whole number of shares shall be subscribed for ; and shall be conducted by the before mentioned commissioners, or either of them, or in case of their inability to attend, by any five of the subscribers. The votes shall be given in by ballot, by the respective share-holders, in person or by proxy ; in the latter case, the proxy shall deliver in his power, at the time he shall give in the ballot ; each share-holder shall be entitled to a vote for every share he may possess, but shall give in all his votes at one time : *Provided nevertheless,* that no share-holder shall be entitled to more than five votes. The seven highest on the polls shall be declared elected, and in case two or more of them have an equal number of votes, it shall be decided by lot, immediately, by the person or persons conducting the election, which of the

Every share to
have one vote.

said two candidates having such equal number of votes, shall serve as director.

1799.

Sec. 3. *And be it further enacted,* That the persons elected shall meet within ten days after such election, and shall choose one of their members to act as president; they shall also appoint a secretary and treasurer; the said president, directors, secretary and treasurer, shall continue in office twelve months, to commence from the day of election, and until successors shall be elected or appointed to succeed them. All elections after the first, shall be conducted by the secretary, whose duty it shall be to give at least thirty days previous notice in the paper of the public printer, of the time and place of holding such election, or on failure thereof, shall forfeit and pay fifty dollars to the use of said company, and recoverable by them by action of debt or information in any court of record in this commonwealth having cognizance thereof; and the said secretary shall conduct the election in the same manner as is herein before directed; and in case no election shall be held on the day annually fixed on for that purpose, it shall and may be lawful for the president and directors (a quorum being present) to appoint another day for holding said election; and the directors so chosen, shall continue in office until the next annual election, and until successors shall be chosen agreeably to the mode prescribed by this act; and it is further declared, that the day on which the first election is held, shall be the day fixed for the annual elections, unless such day shall happen on a Sunday, and then the election shall be held on the day succeeding.

Secretary and treasurer how appointed.

Elections how to be conducted.

Sec. 4. *And be it further enacted,* That so soon as the election of the company shall take place, that the subscribers shall become one body politic and corporate, in deed and in law, and shall be stiled and known by the name of the "President and Directors of the Frankfort Bridge Company;" and by the same name shall have perpetual succession, and enjoy all the privileges incident to a corporation, and shall be capable of taking and holding as tenants in common, their capital stock, and the increase and profit thereof, and also such lands and tenements as shall or may be necessary for carrying their plan into complete operation; and by the name and stile of the President and Directors of the Frankfort Bridge Company, may sue or be sued, or do and perform every other

The company incorporated.

1799. matter or thing which a corporation or body politic may lawfully do.

Powers of president and directors.

Sec. 5. *And be it further enacted*, That the commissioner or commissioners, shall deliver up the book of subscriptions to the president and directors of the company, and thereafter all business shall be conducted by them; and the president and directors shall devise or cause to be devised, such plans, and make such rules and by-laws, as may be judged necessary and proper, (not inconsistent with the constitution and laws of this state,) for conducting and carrying into effect the completion of the said bridge. And the said president and directors shall, from time to time, direct the mode of making assignments or transferences of shares; they shall make or cause to be made, all contracts or bargains for carrying the said work into effect.

Who a quorum to do business.

Sec. 6. *And be it further enacted*, That the president and three directors shall constitute a quorum to do business; and on failure of the president's attendance, any four of the directors shall constitute a board, who shall choose a president *pro tempore*; they shall cause all their acts and by-laws to be fairly entered in a book to be provided for that purpose, and be signed by the president for the time being.

By-laws.

Regulations respecting the payment of the shares.

Sec. 7. *And be it further enacted*, That one sixteenth of each share shall be paid by the holder on the day of the first election, to the commissioner or commissioners who shall conduct the same, and by him paid over to the treasurer, or on failure thereof, the share or shares unpaid for, shall be considered as forfeited, and may be subscribed for by any person applying for and paying for the same; one other sixteenth part shall be paid as soon as the directors may think proper to call for it, by public advertisement in the paper of the public printer, one month before the same shall be payable; one eighth part more shall be payable at the end of three months from the day the work shall be let, and one eighth more at the end of every three months thereafter, until the whole is paid, except the president and directors may consider and direct that a smaller sum than the amount of that proportion will be sufficient for the purposes of conducting the said work, and direct accordingly; and all arrears due from the members of the said company, for the shares aforesaid, in case of failure in the payment

thereof at the time the same shall be due by this act, or the regulations of the said directors, shall bear legal interest from the time they shall have become due, until payment thereof ; and any share or shares being in arrears for six months and upwards, it shall and may be lawful for the president and directors to expose such share or shares to sale at public auction, for cash, giving one month previous notice in some public newspaper, of the time and place of such sale ; and the president shall convey the share or shares so sold, to the purchaser, who shall hold the same in like manner, shall be entitled to the same advantages, subject to the same conditions and forfeitures, as original subscribers: *Provided always*, that if the share or shares so to be sold as aforesaid, shall not produce a sum sufficient to discharge all arrears with the interest thereon due for such shares, that the said company shall have a right to prosecute a suit or suits for the recovery of the balance of said arrears, which may still remain due and unpaid. And in case the sale of such share or shares, shall produce a sum more than sufficient for the discharge of such arrears as aforesaid, that then the residue thereof shall by direction of said board of directors, be paid to such original share-holders.

Sec. 8. *And be it further enacted*, That the treasurer shall, before he enters upon the execution of any part of his functions as such, enter into bond with security to be approved of by said president and directors, payable to the president and directors of the Frankfort Bridge Company, in the penal sum of thirty thousand dollars, conditioned for the faithful discharge of the duties required of him by this act ; he shall keep in a book to be provided for that purpose, accurate and fair accounts of all monies by him received or disbursed by virtue of his said office, and shall lay the same before the president and directors once in every three months, for their inspection and approbation ; and if approved of, shall be so certified by them. The treasurer shall pay no money but by warrant from the president or three directors, counter-signed by the secretary, who shall keep an account thereof, and produce it at each settlement of the treasurer's accounts. A true statement of the receipts and expenditures at the end of every six months shall be published until the work be completed.

Sec. 9. *And be it further enacted*, That the said presi-

1799.

Shares in arrear
may be sold.

Provide,

Treasurer, to
give bond, &c.

His duties,

Writ of *ad quod*
damnum.

1799.

To value lands
necessary for e-
recting the
bridge.

dent and directors may sue out one or more writ or writs of *ad quod damnum*, from the county court of Franklin, (in the manner prescribed by law, in case of application for leave to erect water grist mills,) directed to the sheriff of said county, commanding him to empanel a jury of twelve disinterested men of the county, to estimate the value of so much land adjacent to the terminations of the said bridge as may be deemed necessary by the said directors for fixing the abutments thereof; which estimation being reported to the said court by the said inquest, shall be recorded therein, and shall vest in the said company the fee simple estate in and to such lands, upon the payment or tender of the said estimated value to the original proprietor or proprietors thereof, or their agents.

Rules to be fra-
med for collec-
ting and ac-
counting for
tolls.

Sec. 10. *And be it further enacted*, That within ten days after the completion of the aforesaid bridge, for the transportation of passengers and carriages, the president and directors for the time being, shall meet for the purpose of adopting such rules and regulations for the collecting and accounting for the tolls, and for preserving the said bridge, and all other things necessary for the regulating and conducting the business of the company in future, as they may deem expedient and necessary.

Tolls for pas-
sing the bridge.

Sec. 11. *And be it further enacted*, That the said company shall be entitled to demand and receive the following tolls for passing the said bridge, to wit:

	<i>Cents.</i>
For every man or woman,	5
For every child over five years old,	5
For every horse, mare or colt,	5
For every waggon,	50
For every cart,	37 1-2
For every riding carriage, with four wheels,	50
For every riding carriage with two wheels,	37 1-2
For every head of cattle,	2
For every head of sheép, goats or hogs,	1
For every hogshead of tobacco, rolled or car- ried across, not being in a waggon or cart,	25

Which tolls shall be divided among the share-holders in proportion to their shares, after deducting the expenses of collecting and other charges.

Compensation
to president and
directors.

Sec. 12. *And be it further enacted*, That a majority of the share-holders shall have power, after the work is

completed, to make any reasonable compensation to the president and directors from time to time, as they may think proper ; and all other compensations shall be made by the president and directors.

1799.

CHAPTER CCX.

An ACT for enlarging the jurisdiction of the General Sessions, held in Frankfort, for regulating proceedings in the Court of Appeals, in certain cases, and for other purposes.

Approved December 21, 1799.

SECTION 1. *BE it enacted by the general assembly,* That the judges of the district court shall in future hold their two sessions in the state-house in Frankfort, on the first Mondays in April and September, in every year ; and shall sit fifteen days each term, if the business before them shall require it. In addition to the jurisdiction now allowed to said court, which shall hereafter be stiled the General Court, it shall have original jurisdiction in the following cases, to wit : in all controversies between non-residents, and between non-residents and the citizens of this state, where the matter in dispute shall be above the value of twenty dollars. In all cases between citizens of this state, respecting the titles or bounds of lands, if both parties consent and agree thereto ; which consent and agreement, if made before the commencement of the suit, shall be in writing, signed by the parties, and attested by two witnesses, and filed with the clerk at the issuing of the writ or *subpoena*, or at the return of the declaration in ejectment ; and all such cases respecting land as aforesaid, may also be removed from any of the district courts to the general court at any time pending the same, upon the parties or their agents petitioning the court to remove the same ; in which cases it shall be the duty of the clerk to make out a complete transcript of all the papers filed, and proceedings had therein, and transmit the same without loss of time, to the clerk of the general court. All original papers filed in the district court, in any such suit, shall be delivered, if required, to the respective parties who filed the same ; and the cases so removed, shall stand on the docket of the general court in the same state in which they stood in the court from whence they were removed ; and shall

Judges of the district courts, when, where, and how long they are to hold their annual sessions.

Hereafter to be called the general court.

Its further jurisdiction.

What suits may be removed from the district courts to the general court, & how. Clerk's duty.

Original papers to be delivered to the person filing them, if required.

Suits removed how to be placed on the general court docket, and proceeded on.

1799. be proceeded on and determined by the general court, in the same manner as if they had originated therein.

To be a court of record, and suits commenced therein how conducted, &c.

New and difficult questions arising in the district courts to be removed to the general court, and how determined.

Judgment or decree after being superded, affirmed; what damages recovered.

Superdedas, how obtained.

A certain part of a former law repealed.

Any person obtaining superdedas to file errors in writing. No others afterwards shall be alledged or examined by the court.

Record, where to be lodged.

Appellant or plaintiff's duty to lodge the record.

When the appellee or defendant may demand trial.

Sec. 2. The general court shall be a court of record, and the suits commenced therein, shall be conducted in the same manner, and the said court be governed by the same rules and regulations as the district courts are.

Sec. 3. When any question new or difficult, shall arise in a suit in a district court, in which the title or bounds of land may come in question, the court may direct the said suit, and all proceedings and papers had and filed therein, to be removed to the general court; and the said court shall proceed to hear and finally determine the same, in like manner as if said suit had originated therein.

Sec. 4. Whenever a writ of error has been made a *superdedas*, and the judgment or decree so superseded be affirmed in part or in whole, the defendant in error shall be entitled to the same per cent. in damages, which is allowed by law in the case of an appeal.

Sec. 5. No writ of error shall be a *superdedas* unless the court of appeals, or some judge thereof in vacation, after inspecting a copy of the record, shall order the same to be made a *superdedas*; and so much of the act passed on the nineteenth day of December, one thousand seven hundred and ninety-six, as directs a judge granting a *superdedas*, "to certify that there is sufficient error in the record for reversing the judgment, in whole or in part," is hereby repealed. Every person, on obtaining a *superdedas*, shall assign in writing, the particular error or errors in the record on which he means to rely, and which shall be filed with the clerk of the court of appeals, at the time the writ of *superdedas* issues; and on the trial thereof, no other errors shall be alledged by the party, or examined into by the court.

Sec. 6. In all appeals and writs of error the transcript of the record shall be transmitted to the clerk of the court of appeals within thirty days at most, after the said appeal has been taken, or writ of error sued out, and shall not be thereafter received; and it shall be the duty of the appellant or plaintiff in error to carry up the record thereof. The appellee or defendant in error may demand a trial of such appeal or writ of error during that term at which the same are returnable, and the court shall not continue the same to another court, without the

consent of such appellee or defendant in error; and no pleadings shall hereafter be had on writs of error; but the same shall stand for trial at the court to which they may be returned.

1799.

No pleadings to be had on writs of error, &c.

Sec. 7. No judgment, after the verdict of twelve men, shall be stayed or reversed, where it shall appear to the court that the merits of the cause have been fairly and fully decided by such verdict, and that such verdict and the judgment thereon might be effectually pleaded in bar to another suit for the same cause: but nothing herein contained shall extend to cure or affect any errors in the judgment of the court before whom such cause may be tried, in questions of law which may have arisen or been brought before them by the pleadings therein, or otherwise, if the same appear upon the record by bill of exceptions or demurrer to evidence.

Judgment in certain cases not to be stayed or reversed.

Provido:

Sec. 8. *And be it further enacted,* That the court of appeals shall in future hold their two annual sessions on the first Mondays in May and October, and shall sit thirty days (Sundays excepted) if the business before them shall require it. The district court held in Washington, shall commence on the first Mondays in March, July and November, in every year. The district court held in Paris, shall commence on the fourth Mondays in March, June and October, in every year. The district court held in Lexington, shall commence the first Monday in February, the fourth Monday in May, and the third Monday in September, in every year. The district court held in Franklin, shall commence on the third Monday in March, the first Monday in June, and the fourth Monday in September, in every year. The district court held in Danville, shall commence on the third Mondays in January, May and August, in every year. And the district court held in Bairdstown, shall commence on the third Mondays in April, July and October, in every year. And the Logan district court, now directed to be held in October in every year, shall hereafter be held on the third Monday in September in every year. Each of the aforesaid courts shall sit fifteen days successively, (Sundays excepted,) if the business before them shall require it: *Provided however,* that the district courts held at Washington on the third Monday in February next, and Bairdstown on the first

Alteration in the days for holding the court of appeals; and how long it shall sit.

Washington district court.
Paris district court.

Lexington district court.

Franklin district court.

Danville district court.

Bairdstown district court.

Logan district court.

Each district to sit 15 days if necessary.

Provido as to Washington & Bairdstown district courts.

1799. Monday in the month of January next, shall be held in the same manner as if this act had not been passed.

Garrard county quarter session court altered. Sec. 9. *And be it further enacted*, That the court of quarter sessions for the county of Garrard, now directed by law to be held on the third Tuesday in May in every year, shall hereafter be held on the third Tuesday in June.

Repealing clause. All acts or parts of acts coming within the purview of this act, shall be, and the same are hereby repealed.

To commence. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXI.

An ACT to amend an act to reduce into one the several acts concerning Mill-Dams, and other obstructions in water courses.

Approved December 21, 1799.

See the preface to Chap. 48, of Vol. I.

Preamble. WHEREAS it is represented to the general assembly, that the Beech fork, from Ferguson's mill to its junction with the Ohio, has been cleared out with great expence, for the navigation of boats, &c. by private subscription, since which, there have been fish-dams and other obstructions erected, which affect the navigation thereof, which dams are claimed by persons of no property which the law now in force can take hold of; and whereas attempts have been made to pull down said dams, &c. which has been prevented by force of said owners, or their associates:

Power and duty of commissioners. Sec. 1. *Be it enacted*, That Charles Morehead, Atkinson Hill, John Philips, John Nall, and Joshua Ferguson, be, and they are hereby appointed commissioners, who, or a majority of whom, are hereby vested with full power to raise by subscription, in money, property or labor, a fund for the purpose of clearing and keeping in repair, the navigation of the Beech fork, from Ferguson's mill to its junction with the Ohio; who are fully authorised to pull down or cause to be pulled down, any obstruction in said navigation, and on any force being offered, to prevent the same, the said commissioners, or a majority of them, are hereby fully authorised to call on the commandants of the militia of Washington, Nelson or Bullitt, as they may think most convenient, for a guard to those called on to assist in pulling down those

obstructions, that now, or may hereafter be in said river ; 1799.
 which commandant, so called on, is hereby directed to
 order a sufficient guard accordingly, who are directed
 to do the duty enjoined them by this act.

Sec. 2. *And be it further enacted*, That if any person do make or cause to be made, any fish-dam or obstruction in the said Beech fork, he shall forfeit, for every such offence, and pay, the sum of ten dollars for every twenty-four hours such obstruction shall remain in such water course, recoverable with costs, in any court of record having jurisdiction of the same, one half to the informer, and the other half to the purpose of clearing said river. And where any person is unable to pay the fine aforesaid, he, she or they shall be subject to imprisonment any time not exceeding twelve hours for every twenty-four hours such obstructions remain in said navigable water course, at the discretion of a jury, in any court having jurisdiction of the same.

Penalty for making obstructions in the Beech Fork.

Sec. 3. *And be it further enacted*, That the further time of ten months, from and after the passage of this act, be allowed to George M. Bedinger and George Reading, for the completion of locks and slopes for the passage of boats and fish through their mill-dams, on the south and main fork of Licking : *Provided* also, that the said Bedinger and Reading, shall, within ten months after the passage of this act, erect good and sufficient locks and slopes in their dams, and thereafter keep said locks and slopes in good order for the passage of boats and fish ; and that until the expiration of the said ten months, and as long thereafter as the said Bedinger and Reading, their heirs or legal successors, shall keep the locks and slopes, the said Bedinger and Reading, their heirs and legal successors, shall sustain no damage in consequence of any law now in force, concerning the navigation of the south and main forks of Licking, within this commonwealth : *Provided however*, that nothing in this act contained, shall be construed so as to affect any suit or suits which may have been instituted against said Bedinger or Reading in consequence of a violation of any former law.

Time given for completing locks and slopes on Licking.

This act shall commence and be in force from the To commence passage thereof.

1799.

CHAPTER CCXII.

An ACT allowing Mills to be built on Main Licking under certain restrictions.

Approved December 21, 1799.

Vide the prelection to Chap. 48, of Vol I.

Preamble.

WHEREAS it is represented to the present general assembly, that great advantages will result to the community at large, by permitting mill-dams to be erected across Main Licking under certain regulations and restrictions; therefore,

How persons
desirous of building
mills across
Main Licking
shall proceed.

Sec. 1. *Be it enacted by the general assembly,* That any person or persons, being desirous of erecting mills on Main Licking, and owning lands on one or both sides of the said river, and wishing to build a dam across the same, shall proceed as is directed and prescribed by an act entitled "an act to reduce into one the several acts concerning mill-dams and other obstructions in water courses: *Provided however,* that no dam shall be erected below the mouth of Slate creek on Main Licking, higher than two feet; which dam shall be well fixed with locks and slopes for the passage of boats and fish, in such manner as shall be deemed most likely to secure the free passage of the same in the opinion of the jury, whose duty it shall be to describe, in their report, the manner in which the said locks and slopes shall be fixed, for which purpose the clerk shall give directions in his writ, directed to the sheriff, to that effect.

Proviso as to
the height and
fixing of the
dams.

Jury, and their
duty.

Clerk's duty.

Petitioner to
give bond, &c.

Penalty & con-
dition.

Bond how pro-
secuted.

Certain acts &
parts of acts re-
pealed.

Sec. 2. *And be it further enacted,* That upon the report of the jury aforesaid, if it be in favor of the petitioner or petitioners, that he, she or they shall enter into bond with one or more sufficient securities, payable to the governor for the time being, and his successors, in the penalty of three thousand dollars, conditioned to do and perform whatever shall be required by the jury aforesaid, for the purpose of securing the free navigation of the said river; which bond may be sued for by any person injured, and shall not be void on the first recovery, but may be put in suit from time to time by any person who may be injured by a breach of the condition thereof.

Sec. 3. *And be it further enacted,* That so much of an act entitled "an act for removing the obstructions, and for opening the navigation of Main Licking, as high as

the mouth of Slate creek, and up said creek to Bourbon furnace," and also all other acts or parts of acts as comes within the purview of this act, shall be, and the same are hereby repealed. 1799.

CHAPTER CCXIII.

An ACT giving leave for the erection of Mill-Dams across the South Fork of Licking, and for other purposes.

Approved December 21, 1799.

WHEREAS application has been made to this present general assembly, for leave to erect water grist-mills across the south fork of Licking, and being willing that the same should be granted under certain restrictions and regulations; therefore, Preamble.

Sec. 1. *Be it enacted by the general assembly, That* any person or persons being desirous of erecting mills on the south fork of Licking, shall have liberty to erect dams for that purpose, across the said south fork, not exceeding seven feet high: *Provided*, they shall enter into bond, with sufficient security, to be approved of by the court of the county in which such dam may be erected, in the penalty of two thousand dollars, that they will make and keep in complete order, slopes and locks sufficient for the passage of boats and fish, which shall be completed with the dam; and upon conviction of failure therein, in any court of record having cognizance of like sum, execution upon such bond may issue as in other cases, and the said dam may be destroyed, and the obstruction thereby removed, by any person whatever, who shall not be liable for any prosecution for the same. Mill-Dams may be erected.
 Provided.

Sec. 2. *And be it further enacted*, That the act entitled "an act for opening the navigation in the South Stoner's fork of Licking," so far as the same prohibits mill-dams to be erected across the same, is hereby repealed. Former law repealed.

This act shall commence and be in force from and after the passage thereof. To commence.

1799.

CHAPTER CXXIV.



An ACT to amend and reduce into one, the several acts establishing a Permanent Revenue.

Approved December 21, 1799.

See the preface to Chap. 10, of Vol. I.

SECTION 1. *BE it enacted by the general assembly,*
That there shall be paid within this state, the following
taxes : For every hundred acres of land, the following
sums, according to the following classes : the land shall
be divided into three classes, according to their quality,
that is to say, first, second and third rate ; the first rate
shall be taxed at thirty-four cents ; the second rate,
twenty cents, and the third rate, at twelve and a half cents
per hundred acres ; and in the same proportion for a
greater or a lesser quantity ; for every slave, except
such as have been or may be exempted by the county
court from the payment of taxes, on account of infirmity,
twelve and one half cents ; for every horse, mare, colt,
or mule, (except covering horses,) three cents, and for
every covering horse, the sum for which such horse co-
vers one mare the season, which rate or sum, the owner
shall note down when he delivers in his list of his pro-
perty to the commissioners ; also for every retail store
within this state, twenty dollars ; for every riding car-
riage, twenty-five cents per wheel ; and for every tavern
license, ten dollars : which said taxes shall be paid an-
nually, in the manner herein after directed.

Sec. 2. The county court of each county within this
commonwealth, shall, in the months of January or Fe-
bruary, appoint as many persons as they may think ne-
cessary, in every year hereafter, to be commissioners
for the purposes herein after mentioned, to continue in
office one year ; who shall take the following oath or
affirmation, before some justice of the peace for his coun-
ty, before he begins the exercise of his office : " I, A.
B. do solemnly swear or affirm, (as the case may be,)
that as commissioner of _____ county, I will, to
the best of my skill and judgment, diligently and faith-
fully execute the duties of the said office according to
law, without favor, or affection, or partiality ; and that
I will do equal justice, according to the best of my know-
ledge, in every case in which I shall act as commission-
er. So help me God." A certificate of which oath,

Land to be
classified.

Articles taxed.

County courts
to appoint com-
missioners of tax

Their oath.

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shall be recorded in the court of his county ; and each commissioner shall moreover, enter into bond with sufficient security, payable to the governor for the time being, and his successors, in the penalty of two thousand dollars, conditioned for the faithful discharge of the duties hereby required of them ; which bond shall be lodged with the clerk of his county court, for safe keeping ; and a copy thereof transmitted to the auditor. And in case any commissioner shall fail to perform any of the duties enjoined on him by this act, it shall be the duty of the auditor, and he is hereby empowered to move against such commissioner in the same manner, and in the same courts, as against delinquent sheriffs ; and the court before whom such motion is made, shall have power to fine such commissioner, according to the nature of the offence, in any sum not exceeding the penalty of the bond aforesaid.

1799.

Shall give bond.

For a breach of which bond he shall be moved against by the auditor, &c.

Sec. 3. The court for each county, in which more than one commissioner is appointed, shall lay off and ascertain the bounds of the district allotted to each commissioner. Every commissioner hereafter appointed, shall immediately after the tenth day of March, begin, and continue to proceed, without delay, throughout his district, and call on every person therein subject to taxation, or having property in his or her possession or care, on which any tax is hereby imposed, for a written list thereof ; which list, being corrected (if necessary) and distinctly read over by the commissioner to the person delivering the same, he or she shall then make oath or affirmation, that such list contains a true and perfect account of all persons, and every species of property belonging to, or in his or her possession or care, within that district, subject to taxation on the tenth day of March then next preceding, and that no contract, change, or removal whatsoever, of property, hath been made or entered into, or any other method, devised, practised, or used, in order to evade the payment of taxes. Which oath or affirmation, the commissioner is hereby empowered to administer. In case any person shall be absent from his or her place of abode, at the time the commissioner calls to receive his or her list ; and if it appears to such commissioner that such absence was not intentionally, or done with a view to avoid a delivery of such list, it shall be lawful for the commissioner to require, in

Courts to allot districts to the commissioners.

Their duty.

List of taxable property to be given in on oath.

By whom administered.

How a commissioner may proceed against absent persons, &c.

1799. writing, the attendance of such absent person, with his or her list, at any time and place within his district. And in case of his or her refusing or neglecting to attend at such time and place, the commissioner shall proceed in like manner as is herein after directed, in case of refusal to give in lists ; and the court shall determine on the circumstances of the case, whether the party so refusing or neglecting to attend, shall be subject to the fine hereby imposed on them refusing to give in lists, and shall give judgment accordingly. Each commissioner shall enter all his taxable property in the list herein after directed to be made out by him of the taxable property in his district.

How the proprietors of land are to enter them with the commissioners.

Sec. 4. It shall be the duty of all owners and proprietors of lands within this state, whether they claim the same by entry, survey, patent, or deed of conveyance, when applied to by a commissioner of the district in which they reside, to give in, on oath, a list of all their lands, specifying in such list, the number of acres in each tract, and the county and water course in which it is situated, and the quality of the land ; also an account of the names in which the entries were made, and for whom surveyed, if a survey has been made, and for whom patented, if a patent has issued, if they are acquainted therewith.

How lands to be rated.

Sec. 5. The following rule shall be observed in rating any tract of land : where a greater part of a tract shall be superior in point of quality to second rate land, it shall be denominated first rate ; where a greater part shall be inferior to second rate, and superior to third rate, in point of quality, it shall be denominated second rate ; and where the greater part of a tract of land shall be inferior to second rate, it shall be denominated third rate land ; and any tract or tracts of lands that the owner has no knowledge of, and cannot give satisfactory information thereof, shall be placed in the second class,

How errors may be corrected in lists of land.

Sec. 6. When any person thinks any tract or tracts of land, belonging to him or her, are placed in an improper class, or the land twice, or improperly listed, it shall be lawful for such person, upon application to the county court of the county in which the lands lie, or in which he or she resides, and making due proof of the same, to have the matter rectified, and the proper class of such tract or tracts ascertained, or error corrected ; which

alteration shall be certified by the clerk to the sheriff and auditor.

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Sec. 7. Each of the commissioners shall, after collecting the list of property within his district, in manner before directed, make out three alphabetical lists therefrom, shewing in columns, according to the form hereto annexed, the date when each list was received, and the person chargeable with the tax or taxes, and the number or quality of every species of property, inserting particularly the number of all free male inhabitants above the age of twenty-one years, and distinguishing also those persons subject to county levies; also the rate of the land, placing each tract in its proper class, the county in which it lies, and the water course on which it is situated; likewise in whose name entered, for whom surveyed, if a survey has been made, to whom patented, if a patent has issued, if those circumstances can be ascertained. Which lists shall be kept and delivered in the following manner: each commissioner shall deliver the lists, together with the original lists taken from the said individuals in his district, to the clerk of the county court of his county, who having examined the said lists, and corrected any error which may appear therein, shall certify that they are true copies; and having retained one in his possession, shall return the other lists so certified to the commissioner, who shall deliver one to the sheriff of his county for his guide to collect the taxes, and another to the auditor of public accounts, to be kept by him: which lists, or a certificate from the auditor of the balance due, shall be admitted as evidence by any court, in any suit or motion against the sheriff, for the amount of the taxes charged against him: all which lists, it is hereby declared to be the duty of the commissioners to have delivered to the persons above named, on or before the first day of September, in the same year that they are appointed. The list in the clerk's office shall serve for laying the county levy, and it may be examined or copies had therefrom, at the charge of the person or persons desiring the same. And any commissioner failing to perform the duties hereby enjoined in all things, may be, and the court of his county is hereby empowered to remove from office such failing commissioner, and to appoint one in his stead; and also fill vacancies at any time when they may happen. And the commissioners

In what manner commissioners to make out lists of property.

What to be done with the lists so made out.

Auditor's list evidence against sheriff.

For neglect of duty, &c. commissioner may be removed from office, & how.

1799. ^{Duty of the} county court clerk. so appointed, shall immediately proceed to execute the duties enjoined on commissioners by this act. The clerk of the county court of each county shall deliver to every new sheriff coming in office, in his county, within one month after he is qualified himself to act as sheriff, a true copy of the commissioners' books last lodged in his office.

Sec. 8. The court of each county shall make such allowance to the clerk for his services, under this act, and not otherwise provided for, as they shall think necessary; not exceeding, however, two dollars per day; and shall allow to each of the commissioners for their services, the sum of one dollar, for every day they shall make satisfactory proof to the court, to have been actually engaged in the execution of this act, and they shall be exempt from military duty during their continuance in office. And the sheriff of each county is hereby empowered and directed to pay the commissioners and clerks the amount of their respective allowances, to the clerk, on his producing a certificate therefor, from the court, and to the commissioner, on his producing a certificate from the auditor of public accounts, that such commissioner hath lodged in his office, his book, with the necessary certificate thereon; and the amount of such allowance, with the parties receipt, shall be credited the sheriff by the auditor, in the settlement of his account of taxes.

Sec. 9. If any person shall give or deliver to any commissioner, a false or fraudulent list of persons or property, subject to taxation, or shall refuse to give a list, on oath or affirmation, when required by a commissioner, the person or persons so refusing, or giving a false or fraudulent list, shall be liable to a fine of ten dollars; and the commissioner shall proceed to list such person's property, agreeably to the best information he can procure; and all such property, so ascertained, shall be moreover subject to treble tax, to be collected and distrained by the sheriff as other taxes; which fine and treble taxes, shall be recovered in the county court, by the following mode of proceeding, and shall be applied as hereafter directed: the commissioner shall give information thereof, personally, or if unable to attend, in writing to the next court held for the county; which court shall forthwith direct the clerk to issue a summons, requiring the party to appear at the next court to be held.

Court to make allowance to the clerk, for services under this act, and to the commissioners.

To be paid by the sheriff.

Penalty on persons refusing to give in lists of property, or for giving in fraudulent lists.

Proceedings to recover the penalty.

for the county, to shew cause, if any he can, why he shall not be fined and treble taxed, for refusing to deliver in his list, or for giving in an imperfect or fraudulent list of taxables; and the person, upon being served therewith by the sheriff, and appearing, shall immediately plead to issue, and the matter thereof shall be inquired into by a jury, or the court, at the defendant's option; or the person failing to appear on being summoned, the court shall proceed to give judgment and award execution for such fine and treble tax and costs, unless, for good cause shewn, the court shall continue the same till the next court; and the court shall certify the amount of such tax and fine to the sheriff and auditor, that the same may be collected and accounted for. The amount of the fine and tax with the costs, after deducting therefrom as much as may be necessary to pay the clerk's and sheriff's fees, and such allowance as the court may think reasonable to make the commissioner, for his extraordinary trouble on the occasion, shall be charged to the sheriff, and accounted for in like manner as other taxes.

Sec. 10. For preventing frauds and impositions on the commissioners, any person having knowledge of any false or fraudulent list being given to the commissioner, shall give information thereof to the county court, in like manner as the commissioner is directed; and thereupon the same mode of proceeding shall be had, as is directed in the case of information given by a commissioner; and the person informing, shall be entitled to receive one half of the fine imposed on the offender or offenders, to his own use; and the other half, after paying costs, to be applied as before directed.

Sec. 11. A list of all insolvents, and of such persons as have removed out of the county with their property, shall be returned by the sheriff, on oath, to the county court; which list it shall be the duty of the court to examine, and strike out the names of such persons as either of them may know not to be insolvent or removed, and being approved, shall be transmitted by the clerk to the auditor of public accounts, within the time allowed for the collection of taxes, with an account of the amount of the taxes due from any person, who may have removed out of the county, together with the name of the county to which he or she may have moved, within two months after the said list is approved by the court; and

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How to be collected and accounted for.

Any person knowing of a false list given in, to inform the court.

Proceedings thereon.

List of insolvents, &c. to be returned to the court.

1799.	the said sheriff shall have credit in his account with the public by the auditor, for the amount of the taxes due from such insolvents, and persons removed: <i>Provided</i> , they produce to the auditor a copy of their account, sworn to before the court; and the auditor shall immediately transmit to the sheriff of the county to which such person or persons may have removed, the account so received, and shall charge him with the amount, to be accounted for at his next settlement with the auditor: <i>Provided however</i> , that the said last mentioned sheriff shall be allowed at least four months from his receipt of the said account, to collect the taxes due from the persons who may have removed as aforesaid.
Sheriff to have credit therefor.	
Proviso.	
Sheriff to collect the taxes.	Sec. 12. The sheriff of each county, shall, from and after the first day of February, annually, collect and receive from all and every person or persons chargeable therewith, the taxes imposed by this act, in the said county; and in case payment be not made or received on or before the first day of April, annually, the sheriff shall have power to distrain the slaves, goods and chattels, which shall be found on the lands, or in the possession of the person so indebted, notwithstanding such slaves, goods or chattels shall be comprized in any deed of mortgage; and if the owner thereof shall not pay the taxes due, within twenty days after such distress, such sheriff shall sell the same, or so much thereof as shall be sufficient to discharge the said taxes, and the charges for the distress and sale, for ready money or auditor's warrants on the treasury of this state: <i>Provided always</i> , That when unreasonable seizures or distress shall be made, the party aggrieved shall have an action against the sheriff, and shall recover full costs when any damages are given.
When he may distrain, and of what property.	
And sell.	
Proviso.	
Account for & pay taxes into the treasury.	The sheriff shall truly account for, and pay into the treasury of this commonwealth, on or before the first day of October, annually, the full amount of all taxes imposed in his county, deducting therefrom such allowances as the law directs to be made, and seven and a half per centum for his commissions thereon. And in case the said sheriff shall fail to account for and pay into the treasury as aforesaid, the amount of taxes to be collected by him according to law, every such delinquent sheriff and his securities, or either of them, shall be liable to a judgment against them, on motion to be made by the auditor, or other person for him, in any court of record
Penalty on failure.	
How recoverable.	

within this state, provided they have ten days notice of the day on which the motion is to be made, for the amount of the taxes due, and fifteen per centum damages, together with an interest of five per centum on the whole amount of the taxes due, until paid; and the costs of the motion, including any expences that may have been incurred in giving the said notice, for the use of the commonwealth; and thereupon execution shall issue accordingly. The said taxes shall be paid in Spanish milled dollars, or in other current silver or gold coin; and when cut silver money shall be offered to a collector of taxes, or the treasurer, it shall be received by weight as round money.

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Cut money to be received by weight.

Sec. 13. The sheriff of each county shall hereafter, at the county court held in the month of January, unless the court of quarter sessions shall be held in that month, and in that case in the month of February, annually, enter into bond, with at least two sufficient securities, in the penalty of ten thousand dollars, payable to the governor for the time being, and his successors, conditioned for the true and faithful payment and accounting for all taxes and interest, which are, or may become due according to law, which ought to be collected by him for that year; which bond shall not be void on the first recovery, but may be moved on from time to time, until the whole of the penalty shall be recovered. And the clerk of each court, where such bond shall be taken, shall transmit an attested copy thereof to the auditor, on or before the first day of July in the same year. And any clerk failing herein, shall forfeit and pay the sum of three hundred dollars, to be recovered on motion by the auditor, in the same manner as is directed in other cases where a clerk shall fail to perform the duties enjoined on him by this act.

Sheriff to give bond & security.

Condition.

Not void on the first recovery.

Clerk's duty.

Penalty on failure.

Sec. 14. And on any motion to be made on such bond, such attested copy thereof shall be admitted as evidence; and if any sheriff shall neglect or refuse to give such bond, or in case he shall have been a collector of the taxes for the preceding year, and shall fail to produce to such court, to be held in the months of January or February as aforesaid, a *quietus* from the auditor for all taxes due from him, his office shall be vacated: *Provided* however, that he shall continue to act as sheriff, until another is duly qualified; and the court shall immediately

Copy of bond to be evidence. Sheriff's office vacated on failing to give bond or producing a *quietus*.

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And the court shall recommend persons to fill the same.

Duty of the person commissioned in his stead.

How non-residents are to enter their lands

Taxes to be paid to the treasurer.

On failure of payment thereof, the auditor shall transmit the amount, &c. to the register, who shall sell the lands; when and where.

proceed to recommend to the governor, two proper persons to fill the office, who are then justices of the county court; and the person who shall thereupon be commissioned by the governor, shall, at the next court to be held for his county, enter into bond, with securities as aforesaid, for the collection of the taxes, and such other bond or bonds as shall be directed by law.

Sec. 15. The auditor shall keep a book for the purpose of receiving and entering lands of non-residents, in the manner herein after directed. All non-residents shall in future enter their lands with the auditor, who shall administer an oath to the person delivering the lists thereof, or by any other means procure the best information in his power, for the purpose of ascertaining the quality of such lands; placing each tract in its proper class, under the name of the county in which it shall be situated; and every non-resident shall enter his lands agreeably to the rules and regulations of this act, in case of residents. All taxes due, or which shall hereafter become due, with the interest, on the lands of non-residents, shall be paid to the treasurer, and his receipt being produced to the auditor, he shall file the same in his office, and shall give such non-resident a *quietus*; but the treasurer shall not receive from such non-resident any taxes, unless such non-resident shall produce to him a certificate from the auditor, of the quantity and quality of the land, for which he is about to pay the tax; which certificate shall be by the treasurer filed in his office. No payment shall be considered as a discharge of any tax, unless such *quietus* be obtained within three days from the auditor. When any non-resident shall fail to pay the tax and interest due on any tract of land within the time, and agreeably to the regulations prescribed by law, the auditor shall transmit the amount of the taxes and interest due thereon, to the register, who shall proceed, on the third Monday in November in every year, and from day to day thereafter until the whole shall have been exposed to sale, to sell the same at public auction, at the state-house in Frankfort, in the same manner, and under the like regulations as residents' lands are directed by law to be sold by the sheriff in the county in which such lands lie; except that notice of such sale shall be advertised at the door of the state-house, instead of the door of the court-house of

the county in which the land lies ; and the register shall be entitled to the same allowance, be accountable for taxes in the same manner, shall make such returns to the auditor, and shall have the same power to execute conveyances for lands by him sold, as is provided in the case of sheriffs selling the lands of residents for the non-payment of taxes. The auditor shall keep a book of transfers ; and every non-resident who has entered his land with the auditor, shall not be compelled again to enter the same ; but may, on transferring the same to any other person or persons, have the alteration made with the auditor, and charged to the person or persons to whom transferred, and such person shall be chargeable with the tax of such land or lands thereafter. And whereas doubts have arisen as to the legality of the entry of lands of non-residents, listed with the auditor since the thirty-first day of December, one thousand seven hundred and ninety-eight : *Be it further enacted*, that all such lists so given in and entered, shall be deemed as good and effectual as if the same had been received and entered prior to that day.

Sec. 16. Where any sheriff has received from any non-resident or non-residents, any land tax, and shall not have accounted for and paid the same into the treasury, such sheriff shall be answerable for the money, with the interest from the receipt thereof ; and moreover, such sheriff and his securities, shall be liable to the party aggrieved, for double damages and costs, by action on the case, in any court of record within this state, having cognizance in similar cases.

Sec. 17. The commonwealth shall have a perpetual lien on every tract of land, and every part thereof, for the amount of all taxes, and the interest due thereon ; and no alienations of lands belonging to any person, shall effect the claim or lien of this commonwealth, until the tax and interest due thereon from such person, are paid. And it shall be lawful for the sheriff, where payment is not made in the times herein before prescribed, to levy the whole amount of taxes and interest due thereon from any person, on any slaves, goods, or chattels, which may be found on the land for which the tax is due, in the possession of any person, claiming under the proprietor from whom the tax became due : *Provided*, that no purchaser shall be subject to the payment of any tax that

1799.

Register to account for taxes, &c.

Auditor to keep a book of transfers for non-residents-

Certain entries made with the auditor, declared valid.

Penalty on sheriffs who have received taxes from non-residents, and fail to account therefor, &c.

Commonwealth to have perpetual lien on lands for the taxes.

Which may be levied on goods &c.

Provide.

1799. may be due, except for that part which he may have purchased. And all tenants who shall be obliged under this act to pay the tax due on any lands leased to them, prior to their interest in the same, or who shall be obliged to pay taxes on a greater part of such land than they hold under such lease, shall have a right to demand and receive the amount of taxes so paid by them, from the original owners and proprietors of such land, and shall have a lien on the land for which the taxes were so paid, until they be re-paid the amount thereof:

Proviso: *Provided*, that nothing herein contained, shall effect any special contract entered into between each original owner or proprietor and tenant, concerning the payment of taxes which shall be due on such land. Every person who shall pay the taxes due on any land, who shall afterwards be evicted from the same, shall have a lien on the lands for the taxes so paid by him, and interest thereon, and shall have a right to retain possession of such land, until the person recovering it from him, shall pay or tender him the amount thereof; unless the person so recovering the land, shall also have paid the taxes due thereon. And in all cases where any person has paid, or shall, on or before the first day of December next, pay the tax on any tract of land, which shall afterwards be lost or relinquished; in that case, and in no other, the person losing, shall, upon application to the auditor, and producing satisfactory vouchers from some record to him, receive an audited warrant to the amount paid by him, with a deduction of seven and a half per centum therefrom, which shall be receivable in taxes, as other audited warrants are. All persons who have purchased, or may, before the last day of September next, purchase land sold at sheriffs' sales for the payment of taxes, and the title thereto shall be legally evicted or relinquished by such purchaser, in part or in the whole, such person shall be entitled, upon producing to the auditor satisfactory vouchers from some record, of such eviction or relinquishment, to a warrant for the amount of taxes so actually paid by him, for the lands so evicted or relinquished, with a deduction however of six per centum therefrom; and which shall be receivable in payment of taxes, as other audited warrants are. Where the tax on any tract or tracts of land have been, or may hereafter be twice paid for the same year, under the same

Provision for tenants compelled to pay taxes before their interest in the land commenced.

For persons having paid the tax,

Afterwards lost or relinquished.

Purchases made at sheriff's sale, afterwards lost or relinquished.

Where tax has been twice paid in one year, for the same land,

title, upon the party's making satisfactory proof thereof to the court of the county in which he may reside, the court shall certify the same, and the sheriff shall give such person a credit for the amount thereof, in his taxes the next year, or any succeeding year; and the auditor shall credit such sheriff accordingly.

1799.

Sec. 18. It shall be lawful for the sheriff to sell so much of each tract of land, charged with taxes, as will be sufficient to pay the same, if the said land shall be in his county. And the sheriff shall in that case advertise

Lands to be sold
for taxes, and
how.

the time and place of sale, one month at the door of the court-house of his county, and for three months, twice in each month, successively, in the gazette of the public printer. After such sale, it shall be the duty of such sheriff to deliver to the purchaser, a certificate of the quantity of land sold, describing therein the land that was charged with the tax, and the end or side from which the quantity sold is taken. And the surveyor of the county, upon the receipt of such certificate, shall, by himself or deputy, proceed to survey the quantity sold as aforesaid, agreeably to the said certificate, and shall charge the purchaser with the expence of the same.

How conveyed.

The surveyor, or his deputy, (as the case may be,) shall give reasonable notice to the former owner, if in the county, or his agent, if any he has therein, of the day on which the survey is to made; and upon the plat and certificate of the survey made as aforesaid, being produced to the sheriff who made such sale, whether in or out of office, if he be alive and in the state, if not, to his successor, it shall be his duty to convey the same to the purchaser; which conveyance shall vest in the purchaser all the right, title and interest of the claimant only, for whose tax the land shall have been sold: *Provided*

however, that the owner of land liable to be sold for non-payment of taxes, shall have the privilege of directing from what side, end or corner the part to be sold shall be taken. If the land entered on a list delivered to a sheriff, shall not lie within his county, and payment shall not be made to him of the tax due thereon, he shall, on or before the first day of May, in every year, certify to the auditor a copy of so much of the list delivered to him, as relates to the land entered with the commissioner of his county lying in another county. And it shall be the duty of the auditor to transmit a copy of the same

The owner may
direct what part
shall be sold.

Proceedings
when lands lie
not in his coun-
ty.

1799.

Lands returned
by the sheriff
as not lying in
his county, to
be sold by the
register, &c.

Of sheriff's sales
heretofore made

Proceedings
when land will
not sell for the
tax.

Sheriff not to
purchase land
sold for taxes.

to the sheriff of the county in which such land is stated to be by the commissioner's book, on or before the first day of July; whose duty it shall be, if payment be not made, and no property to distrain can be found, to sell the same, if it shall lie in his county, in like manner as he is herein before directed to sell land entered and lying within his own county; and if the said last mentioned sheriff shall return that the said lands do not lie in his county, then the auditor shall transmit a list thereof to the register, who shall proceed to sell the same, at the same time and in the same manner as he is hereby directed to sell the lands of non-residents; and if the sheriff shall make sale of the lands, of which he received the account from the auditor as aforesaid, he, or his successor, shall have the same power of conveying as is herein before directed in other cases of sales by sheriffs; and where any sale has heretofore been made by any sheriff, according to law, of any lands for the payment of taxes, it shall be lawful for such sheriff, or his successor, to make conveyances of the lands so sold, in the manner aforesaid.

Sec. 19. All arrears of taxes due for land, shall be charged and collected according to the class in which it is placed; and where the sheriff shall expose any part of a tract of land for sale, for the amount of the tax and interest with which it is charged, and it will not sell for the same, it shall be the duty of the county court, upon proof being made of the same, to certify it to the auditor, who shall give the sheriff credit for the taxes with which such land is charged, or so much thereof, as is in arrears. And where any tract of land, or part thereof, is not sold, upon being exposed as aforesaid, and the tax on the same not paid, it shall be the duty of the sheriff to report the same to the auditor; as also, a list of such lands as are sold for the taxes, so as to enable the auditor to send out lists the succeeding year: and the taxes due on all lands exposed to sale as aforesaid, and on all other lands on which the taxes are not paid within the time prescribed by law, shall bear an interest of ten per centum per annum, until the whole of the taxes due thereon, are paid. And no sheriff or deputy sheriff, shall, directly or indirectly, purchase any land that shall be exposed to sale for the payment of taxes. And any land purchased by a sheriff or deputy sheriff, or any

other person for his or their use, as aforesaid, shall be 1799.
forfeited to the state : *Provided however*, that no land ^{Lands when to}
shall be sold for the payment of taxes, before the first ^{be fold.}
day of September annually.

Sec. 20. The claim or claims of no person whatever, ^{Lands ceded to}
to lands lying within the limits of that part of this com- ^{the Indians not}
monwealth, which have been ceded to or set apart by ^{liable to taxes,}
the authority of the United States, to or for the use of ^{forfeitures, &c.}
any particular tribe or tribes of Indians, shall be subject
to any fine, forfeitures, or tax whatever, until a further
act of the legislature for that special purpose.

Sec. 21. Where any principal sheriff has appointed, ^{Remedy for}
or shall hereafter appoint, any deputy or deputies, and ^{sheriffs against}
such deputy or deputies; or either of them; shall fail to ^{deputies who}
account for; and pay to his principal, all taxes collected ^{fail to account}
by him or them, or that were to have been collected ^{for taxes col-}
within the time stipulated between such principal and ^{lected by them.}
deputy for the collection of said taxes, it shall be lawful
for such principal sheriff to move against such deputy
or deputies, and their securities, in the court of quarter
sessions, and shall be entitled to recover the amount of
such taxes, with the same damages and interest, as the
commonwealth is entitled to recover against him on the
like sum, and under the same rules and regulations.

Sec. 22. The owner of every lot in a town, shall pay ^{Tax on lots in}
fifty cents for every three hundred thirty-three and one- ^{towns.}
third dollars of value to which such lot is appraised, ex-
clusive of the improvements thereon ; and so in propor-
tion for a less value. It shall be the duty of the com-
missioner to assess or appraise the value of every lot in
every town within his district, from the best informa-
tion he can get, not taking into consideration the im-
provements thereon, which shall not be appraised. If
any owner of such lot shall think himself aggrieved, he
shall have a right to appeal to the next county court,
who, upon due proof being made, shall have power to
alter such assessed or appraised value, as to them shall
seem just and right.

Sec. 23. There shall also be paid, the following taxes; ^{Tax on law}
to wit : on each original writ or *subpoena*, issued from ^{process,}
any district court, the sum of fifty cents ; on each ori-
ginal writ or *subpoena* in chancery, issued from any o-
ther court, fifty cents ; on each appeal to the court of
appeals, two dollars ; on each writ of error, *supersedeas*,

1799.	or <i>certiorari</i> , issued from the court of appeals, one dollar : which taxes shall be paid by the plaintiff, and taxed in the bill of costs, and recovered of the party against whom the judgment is entered, as other costs are recovered ; and for each deed recorded for town lots or other lands, fifty cents ; on the seal of any county court, fifty cents ; on the seal of the commonwealth, when affixed to any writings intended to be sent out of the state, one dollar : which several sums shall be paid to the clerks of the respective courts from whence such process shall issue, or where such deed shall be recorded, or other proceedings had ; and the tax on the seal of the commonwealth shall be paid to, and accounted for, by the secretary, in like manner as clerks are herein directed to account for and pay money into the public treasury. The clerks shall be allowed, for collecting, accounting for, and paying the said taxes imposed by this act, into the treasury of this commonwealth, the sum of five per centum on the money so collected by them, or any of them ; and they are hereby required to account for and pay into the treasury aforesaid, some time in the month of November, in every year, all money received by them pursuant to this act. And that the amount of the said taxes may be justly ascertained, the said clerks shall make out a fair account yearly, prior to the first day of October, of the sums received by them respectively, pursuant to this act ; which account, each clerk shall deliver to the county court that shall be held in the months of October or November ; and make oath that it contains a true and perfect statement of all monies received by him on account of the public ; and the court shall order the same to be certified by the clerk to the auditor, who shall thereupon settle with the clerk agreeable to such account. And if the said clerk shall fail to render such account to the court, or truly to certify the same to the auditor, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered on motion of the auditor of public accounts, in the court of general sessions : <i>Provided</i> , the said clerk shall have ten days previous notice of such motion. And should the said clerks, or either of them, fail to pay the balance which may appear from the said account to be due to the commonwealth, the same, together with fifteen per centum thereon, shall be recovered in like manner, on
On deeds. County seal. State seal.	
How collected.	
Allowance therefor.	
Clerks how to account for taxes.	
Penalty on failure thereof.	
Proviso.	

motion of the auditor: *Provided always*, that nothing in this act contained, shall be so construed as to affect the rights and interest of infants, *feme coverts*, or persons *non compos mentis*; but such persons shall have the term of two years, from and after their several disabilities are removed, to comply with the requisitions of this act. 1799.
Proviso as to infants, &c. with respect to the construction of this act.

Sec. 24. Every sheriff shall deliver to each person from whom taxes shall be received or collected, a list of his taxable property, taken from the copy of the commissioners' books in his hands, with an account of the tax payable and due upon each article in such list thereon. And any sheriff, or deputy sheriff, failing herein, shall forfeit and pay double the tax so received, with costs, for the use of the person suing for the same, to be recovered in the same manner as sums of like amount usually are recovered by law. Every sheriff, whenever he shall pay any sum of money into the treasury, shall, within three days thereafter, lodge the treasurer's receipt with the auditor, and take a receipt from the auditor therefor; which receipt of the treasurer, the auditor is hereby required and directed to enter into a book, to be by him kept for that purpose; and in the same manner, he shall enter in his receipt book, the treasurer's receipt for all sums of money paid into the treasury by non-residents or their agents. Sheriff to deliver list of property to the owner.
Penalty on failure.
To take receipt from treasurer for money paid, and deliver it to the auditor, who shall enter it in a book.

NOVEMBER SESSION,

1799.

April 15.	Dates of receiving lifts.				
Doe, John Fen, Richard Goodtitle, John	Persons names chargeable with the tax.				
200 1000 2000 3000	<table border="1"> <tr> <td>First rate.</td> <td rowspan="3">Number of acres of land.</td> </tr> <tr> <td>Second rate.</td> </tr> <tr> <td>Third rate.</td> </tr> </table>	First rate.	Number of acres of land.	Second rate.	Third rate.
First rate.	Number of acres of land.				
Second rate.					
Third rate.					
Breckenridge, Muhlenberg, Fayette, Garrard, Fleming.	County in which the land lies.				
Blackford's c k, Muddy river, Elkhorn, Sugar creek, Fleming creek,	Water course on which the land lies.				
Richard Fen, John Doe, John Goode, Basil Rice, Jacob Boone,	In whose name entered.				
Same, Same, Same, Same, Same,	In whose name surveyed.				
John Den, Richard Fen, Same, John Doe, John Goode,	In whose name patented.				
2 1 3	White males above 21.				
1 2	White males above 16, and under 21.				
4 6 14	Blacks above 16.				
8 12 19	Total blacks.				
5 3	Horses, mares, &c.				
1 24	Stud horses.				
8	Rates of covering per season.				
1	Retail Stores.				
1	Tavern license.				
D.	Value of town lots.				
500	Wheel carriages.				

FORM OF COMMISSIONERS' BOOKS.

VIII. YEAR OF THE COMMONWEALTH.

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So much of every act as comes within the purview of this act, shall be, and the same is hereby repealed. 1799.

This act shall commence and be in force from the passage thereof. To commence:

CHAPTER CCXV.

An ACT supplementary to the act entitled "an act to amend and reduce into one, the several acts establishing a Permanent Revenue."

Approved December 21, 1799.

See the prælection to Chap. 10, of Vol. I.

BE it enacted by the general assembly, That the several sheriffs, and other public collectors throughout this state, shall be governed by the act passed at the present session of the general assembly, entitled "an act to amend and reduce into one, the several acts establishing a permanent revenue," in the collection of the taxes for the year 1799.

This act shall be in force from the passage thereof.

CHAPTER CCXVI.

An ACT concerning Sheriffs, and the arrearages of Taxes.

Approved December 21, 1799.

See Vol. I, Chap. 16, and the Notes.

SECTION 1. *BE it enacted by the general assembly,* That every sheriff shall be allowed fifty cents for each bail bond he may take; and all sheriffs or collectors of the taxes for the year one thousand seven hundred and ninety-seven, shall be allowed the further time of nine months to collect and pay into the public treasury, all arrearages of taxes due on lands, for any year or years previous to the said year. And where any person has paid the tax on land, for any or all of the said years, and the credits to which he was entitled, have not been given in the commissioners' books, for the year one thousand seven hundred and ninety seven, it shall be the duty of the county courts, on the application of such person, and satisfactory proof being made of such payment, to grant a certificate for the amount so paid, which certificate the sheriff shall receive as payment, and give his re-

Sheriff's fee for taking bail bond

Further time allowed them to collect arrearages of taxes.

Provision for persons who have paid taxes, and no credit given.

1799. receipt accordingly, and shall thereupon be entitled to a credit for the amount thereof in his settlement with the auditor.

Recital.

And whereas it is represented to the present general assembly, that several sheriffs or collectors of taxes prior to the year one thousand seven hundred and ninety-seven, have collected arrearages, which they were not required by law to account for ; therefore,

Where taxes have been improperly collected. Clerk to certify the same to the auditor. Auditor to move against such sheriffs. Sec. 2. *Be it enacted*, That where it shall appear from receipts produced by any person or persons whatever to any county court, that any arrearages of taxes have been thus improperly collected, the clerk of such court shall certify to the auditor the amount thereof, and by whom, and for what year or years collected ; and the auditor is hereby empowered and required to move against the said sheriffs or collectors of such arrearages, and their securities, for the amount thereof, with interest from the receipt thereof, in the same manner as against other delinquent sheriffs.

Sheriffs to collect county levies. Sec. 3. *And be it further enacted*, That it shall be the duty of every sheriff, to collect the levies laid by the county court of his county, and shall enter into bond with security therefor to his said county court, and shall be allowed the same commission for the collection as is allowed by law for collecting the public taxes.

To commence. This act shall commence and be in force from the passage thereof.

CHAPTER CCXVII.

An ACT to amend the act entitled "an act to amend an act entitled an act subjecting Lands to the payment of Debts, and for other purposes."

Approved December 21, 1799.

See the preface to Chap. 55, of Vol. I.

Lands to be sold for what they will bring, at 3 months credit. Bond, &c. taken, and how proceeded on. SECTION 1. *BE it enacted by the general assembly*, That when lands shall be taken in execution, the sheriff shall sell so much thereof as will satisfy the execution, at three months credit, for whatever sum the same will bring ; and he shall take bond with sufficient security from the purchaser, which bond shall be returned to the clerk's office from whence the execution issued, within twenty days thereafter, and shall have the force of a re-

plevin bond : *Provided always*, that if the defendant or defendants in any execution, shall, at or before the day of sale, tender sufficient security, to be bound with him, to pay the amount, and also all costs, with lawful interest for the same, to the creditor or creditors, on such execution, within three months, then, the sheriff, or other officer, shall immediately release the estate or body, (as the case may be,) of such defendant or defendants, from such execution : which bond shall be returned and proceeded on as heretofore has been directed, in respect to replevin bonds.

1799.

Provido as to defendant or defendants giving security for the payment of the amount, &c. within three months.

Bond how to be proceeded on.

Sec. 2. Where an execution shall be issued on a replevin bond, or on a bond for the forthcoming of property, or on a bond taken for the sale of property at three months credit, the slaves, personal estate, and lands of the persons against whom such execution may issue, shall be sold for cash, whatever price the same will bring; and on every such execution, the clerk shall endorse that "no security shall be taken." So much of the act entitled "an act to amend an act entitled an act subjecting lands to the payment of debts," and of all other acts or parts of acts, as come within the purview of this act, shall be, and the same are hereby repealed: *Provided however*, that nothing herein contained, shall subject lands to the payment of debts contracted prior to the seventeenth day of December, one thousand seven hundred and ninety-two : *Provided also*, that nothing herein contained, shall be construed to extend to any execution upon any judgment obtained against a sheriff or other collectors of levies or officers' fees, or public revenue, or for any debt to any public creditor, put into his hands to collect, or to an execution upon any judgment obtained against an attorney for money received by him for his client, or against a principal by his security, or any public debtor ; but the property taken or received under any such execution, shall be sold for cash on the day of sale for what it will bring.

When execution is issued on replevin bond, &c. the property to be sold for what it will bring.

Clerk's endorsement thereon.

Repealing clause.

Provido as to contracts made prior to 17th of September, 1792.

Further proviso as to what the law shall extend.

To commence.

This act shall commence and be in force from and after the passage thereof.

1799.

CHAPTER CCXVIII.

An ACT to permit Debtors to confess judgment in a summary way.

Approved December 21, 1799.

SECTION 1. *BE it enacted by the general assembly,* That where any person shall be indebted to another by bond, bill, note, account, or in any other manner, it shall be lawful for such debtor to confess a judgment for such debt, before any court having jurisdiction thereof: *Provided,* that before the said debtor shall be permitted to confess such judgment, he shall give special bail, to be approved of by the said court, if required by the creditor, for the full amount of what is due such creditor.

Sec. 2. *And be it further enacted,* That where judgment shall be confessed, and special bail given or not given, as aforesaid, the same proceedings shall be had therein, by execution, as if a suit had been brought and regularly prosecuted to a judgment; and where any debtor shall go before a court having jurisdiction of such debt, and offer to give special bail and to confess judgment as aforesaid, if the creditor shall refuse to accept of such bail and confession of judgment, and shall commence suit to recover such debt, he shall pay all costs which shall accrue thereby. No judgment confessed as aforesaid shall be liable to be appealed from, superseded or reversed. And all bonds, bills, notes, and other documents, which may be evidence of any such debt, shall be filed by such clerk of the said court, and safely kept in his office; any law or laws to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXIX.

An ACT supplementary to an act entitled "an act to amend an act entitled an act allowing Settlers south of Green River to pay the Money due the State by Instalments, and for other purposes."

Approved December 21, 1799.

See the prælection to Chap. 220, of Vol. I.

NOTHING contained in the act to which this is a supplement, shall be so construed as to authorize any

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settler having heretofore settled him or herself on any military claim, to remove such settlement, agreeably to the said recited act, on any salt lick or spring, or any bank of iron or other ore; but such claims, so removed, shall be subject to the same restrictions, rules and regulations, as have been heretofore allowed and made by the act entitled "an act granting relief to settlers south of Green river."

1799.

This act shall commence and be in force from the passage thereof.

CHAPTER CCXX.

An ACT to amend the act entitled "an act establishing the Town of Port-William."

Approved December 21, 1799.

WHEREAS it is represented to this general assembly, that doubts have arisen concerning the law establishing the town of Port-William; also the legality of the appointment of the present board of trustees for said town: to remove which doubts,

Preamble:

Sec. 1. *Be it enacted by the general assembly*, That the original plan of said town, now in the hands of the clerk of the present board of trustees for said town, shall be considered as the established plan of said town; and that the same be recorded in the office of the clerk of the county court of Gallatin, and under the direction of the said court.

Original plan of Port-William, the true plan thereof.

To be recorded, and where.

Sec. 2. *And be it further enacted*, That the said town so established, is hereby vested in Garland Bullock, Presley Gray and John Davies, gentlemen, who are hereby appointed trustees for said town, with full power and authority to perform and execute all duties required of trustees appointed under the authority of the before recited act.

New trustees appointed.

Sec. 3. *And be it further enacted*, That all appointments of trustees heretofore made for said town, is hereby declared null and void.

All former appointments of trustees made void.

This act shall commence and be in force from and after the passage thereof.

To commence:

1799.

CHAPTER CCXXI.

An ACT for the redemption of certain Certificates, and for other purposes.

Approved December 21, 1799.

Auditor to call on certain county court clerks, and for what.

Duty of those clerks.

*"Commissions," in the enrolled bill. Penalty on failure thereof.

Auditor to call on certain other persons and for what.

Governor to obtain a statement of certain taxes from Virginia.

When and how persons holding certificates may obtain audited certificates for the same.

SECTION 1. *BE it enacted by the general assembly,* That the auditor of public accounts be, and he is hereby required to call on the county court clerks of the different counties that did exist prior to the act of separation, within this commonwealth, to make report to him on or before the first day of June next, what persons were appointed in their respective counties, collectors of the tax under the laws of Virginia; and the clerks respectively are hereby required to furnish the auditor, as aforesaid, with such return, together with the names of the "commissioners"* of the tax, and their books deposited with them, and such other entry relative thereto as may be found in their respective records, under the penalty of one thousand dollars, to be recovered on motion by the auditor, as in other cases relative to the duty of clerks; and the auditor is hereby directed to call on such person or persons immediately upon the receipt of such returns, to account for and settle the amount of certificates by them collected and recovered, on oath, and agreeably to such exhibits against him. And in case they or either of them should fail to appear and account for their respective collections as aforesaid, the auditor is hereby authorised and required to move against them for such sum or sums as may appear to be unaccounted for, in the same manner as is pointed out by law in similar cases against sheriffs or collectors.

Sec. 2. *And be it further enacted,* That the governor of this commonwealth is hereby required to adopt such method as he shall deem most expedient to obtain from the auditor's office, in Virginia, such statement of the taxes as were due under the laws of that state, on the first day of June, one thousand seven hundred and ninety-two, from the collectors, sheriffs and receivers of the counties then within the limits of this state, and have the same deposited in the auditor's office of this state.

Sec. 3. *And be it further enacted,* That from and after the first day of September, one thousand eight hundred, all such persons as now hold such certificates as are designated in the said act of separation, who will

produce the same to the auditor of public accounts, and prove by his or her oath, or the testimony of any other person or persons, that such certificate or certificates had never been paid in taxes to any sheriff or collector, under the before recited act of Virginia; and moreover make oath before the auditor, who is hereby authorized to administer the same, or produce a certificate from some county court to the same effect, that such certificate or certificates were his *bona fide* property, and in his possession on the first day of November, one thousand seven hundred and ninety-nine, shall be entitled to an audited certificate for the amount of such certificate in manuscript, by him produced, which shall bear an interest of six per centum per annum, from the passage of this act till paid: *Provided*, he shall not find that the said certificate hath been heretofore paid in discharge of taxes. And the auditor is hereby required to file the original certificate, with an endorsement on the same from whom received, and subscribed by such receiver, and issue his certificate accordingly; which shall be entered by him in a book to be by him kept for that purpose; and the said audited certificates shall be receivable in discharge of the instalments due from the lands granted to settlers south of Green river.

This act shall commence and be in force from the passage thereof.

1799.

Provide.

Further duty of the auditor.

Audited certificates to be received in payment for settler's land.

To commence.

CHAPTER CCXXII.

An ACT regulating Elections.

Approved December 21, 1799.

See the observations on Chap. 6, of Vol. I.

SECTION 1. *BE it enacted by the general assembly*, That the sheriff of each county within this commonwealth, shall, at least one month previous to the first Monday in May next, and at least one month previous to the first Monday in August in the year 1801, and also previous to the first Monday in August in every year forever thereafter, notify the inhabitants of his county, by advertisement set up at the door of the court-house thereof, of the time and place of holding the election then next ensuing, and what offices are to be filled, by such election. The sheriff, or other presiding officer, At what time.

Sheriff to advertise elections.

1799. poll to be opened. When closed.	shall, on the day of every election, open the poll by ten o'clock in the morning, and continue the same open until at least one hour before sun-set each day, for three days successively, if necessary, or if any one of the candidates for any of the offices to be filled by such election shall request it.
Judges & clerks of election how appointed.	Sec. 2. The justices of the county court shall, at their court next preceding the first Monday in May next, and at their court next preceding the first Monday in August, in the year 1801, and also at their court next preceding the first Monday in August in every year forever thereafter, appoint two of their own body as judges of the election then next ensuing; and also a proper person to act as clerk; who shall continue in office for one year. In case the county court shall fail to make said appointments, or the persons appointed, or any of them, fail to attend, the sheriff shall immediately preceding any election, appoint proper persons to act in their stead.
When appointed by sheriff.	Sec. 3. The judges of election and clerk, before they proceed to the execution of their duty, shall take the oath prescribed by the constitution, which may be administered by any justice of the peace. They shall attend to the receiving the votes, until the election is completed, and a fair statement made of the whole amount thereof: whereupon the sheriff shall proclaim in the court-yard, the names of the several persons then elected, and to what office. The persons entitled to suffrage, shall, in the presence of said judges and sheriff, vote personally and publicly, <i>viva voce</i> . Unless the sheriff or one of the judges shall know that the person offering to vote, is entitled to suffrage under the constitution, the clerk of the poll shall administer to such person the following oath or affirmation, to wit: "I, A. B. (the person naming himself,) do solemnly swear (or affirm, as the case may be,) that I believe I am twenty-one years of age, that I have resided in this state two years, or that I have resided in this county one year last past, and that I have not voted in this or any other county, at this election;" or one or more of the parts may be administered separately or together, so as to remove the doubts of the sheriff or judge. Any person who shall vote more than once at any such election, shall, upon conviction, forfeit and pay, for every such vote, ten dol-
To take oath.	
Their duty.	
Sheriff to make known who is elected.	
How voters to give their votes Who of them shall take oath.	
Penalty on persons voting twice.	

lars, to be recoverable with costs before any justice of the peace ; one half to the use of the county, and the other half to the person suing for the same. The sheriff shall, within ten days after each election of a representative or senator, severally deliver to each of them, a certificate of his election, expressing therein, the office for which he was elected, and for what time ; and moreover shall within twenty [days*] after said election, transmit to the secretary for the time being, a certificate of such election, in the following form, to wit :—" Be it known to all whom these presents shall come, that I

1799.

Sheriff to give certificates to persons elected. To make return to the secretary of state.

* "Days," not in the copy delivered to the printer.

Form of said certificate.

sheriff of the county of _____ in my full county, by an election held at the court-house thereof, on the _____ day of _____ in the year of _____ by the electors of my said county, qualified according to law, caused to be chosen, _____ for my said county, namely to represent the same in the general assembly." (Which certificate in the case of an election of a senator from a district composed of more than one county, shall be varied so as to suit the case.) The judges of the election and the clerk of the poll, shall receive for their services, one dollar each per day, to be paid out of the county levy, by an order of the county court.

Compensation to the judges and clerk.

Sec. 4. Any person intending to contest the election of one returned to serve as representative, senator, lieutenant-governor, or governor, shall, within ten days after the election, in the case of a representative and senator, and thirty days in case of a lieutenant-governor or governor, give to the person returned, and whose election he means to contest, a written notice under his hand and seal, attested by two subscribing witnesses, stating the particular facts upon which the contest is founded, and no other shall be afterwards alledged or admitted. The court of the county, or any superior court, shall, upon application of either party, appoint five commissioners within any county or counties, to be styled commissioners of depositions ; any three of whom may make a bond, appoint a clerk, and, after taking the oath prescribed by the constitution, proceed to business. It shall be their duty, upon the request and notice of either party of the time and place of taking depositions, to attend agreeably to such notice, and take the depositions of all such persons as may be required by either of the par-

How an election may be contested.

Commissioners to be appointed.

For what purpose.

1799.

Proviso.
Their compensation.

How long they shall continue in office.

Notice to be given of the time and place of taking depositions

How Subpoenas for witnesses may be obtained.

Privileges and allowances of & penalty on witnesses.

Depositions where to be deposited.

Mode of trial to be observed in a contest as to a representative.

Petition to be presented & the proceedings thereon.

ties : *Provided however*, that should they be called together more than twice, the person so calling them, shall pay to them and their clerk, one dollar per day each, for every day they may attend ; and which shall not be taxed in the costs in said contested election. They shall continue in office during good behaviour, and in case of resignation, removal out of the county, or refusal to act, of any of them, they shall give notice thereof to the county court, who shall, at their first court thereafter, fill up such vacancy. In all contests relative to a general election, at least ten days notice in writing, shall be given to the opposite party, of the time and place appointed for the meeting of the commissioners to take depositions. The clerk of the county court shall issue, at the request of either party, *subpoenas* for witnesses, which shall be returnable to the commissioners at their next sitting, which time and place shall be inserted in the *subpoena* ; and the said witnesses shall be entitled to the same privileges and allowances, and subject to the same fines and penalties, as witnesses attending a county court. The depositions, when taken, shall be certified to the clerk of the commissioners under their direction, and safely transmitted by him, under seal, to the secretary for the time being. Where they relate to a governor, a lieutenant-governor, or representative, they shall be lodged by the secretary, with the clerk of the house of representatives, on the first day of the succeeding session ; and where they relate to a senator, they shall be lodged with the clerk of the senate, on the first day of their succeeding session. Where depositions shall have been taken in a contest with any person returned to serve as a representative, the person contesting such return or election, shall, by petition, containing a concise statement of the facts contained in the notices as aforesaid, pray the house that the matter thereof may be heard, and that the petitioner be admitted to a seat in the place of the sitting member, whose election he is contesting ; which petition shall be exhibited within three days after the next meeting of the house of representatives, if ten days shall have intervened, between the taking of said depositions and such meeting ; and if ten days shall not have intervened, then within ten days after the taking said depositions : whereupon the house shall refer the petition and depositions to a select com-

mittee, who, after coming to an opinion, shall report the same to the house; who, in a committee of the whole, shall proceed to determine the contest according to the constitution and laws of this commonwealth. 1799.

Sec. 5. Any person contesting the election of a senator, shall, for the purpose of procuring depositions, pursue the same measures as are directed in the case of a contested election of a representative; and the court, clerk, and commissioners, and their clerk, shall be vested with the same powers, perform the same duties, and receive the same allowances, respectively, as in the case aforesaid; and the witnesses shall be entitled to the same privileges and allowances, and subject for non-attendance to the same penalties as in the case of a representative; and the petition of the person contesting, and the depositions, shall be exhibited within the same time, and acted on in the same manner prescribed in the case of a representative. The judgment in all cases of contested elections of a senator and representative, shall confirm or vacate the office or seat of the defendant in the contest; and the house giving such judgment, shall, as to them shall seem proper, either direct a writ to issue for a new election, or decide which of the candidates has the greatest number of legal votes; in which latter case, the candidate having the greatest number of legal votes, shall be entitled to the seat of the member whose office was by such judgment vacated.

Sec. 6. Any person contesting the election of governor or lieutenant-governor, shall, for the purpose of procuring depositions, pursue the same measures as are directed in the case of a contested election of a representative: and the courts, clerks, and commissioners, and their clerks, shall possess the same powers, perform the same duties, and receive the same allowances, respectively, as in the case aforesaid, and the witnesses shall be entitled to the same privileges and allowances, and subject for non-attendance to the same penalties, as in the case of a representative. The petition of the person contesting such election, and the depositions taken, shall be presented to the house of representatives within ten days after their next meeting; whereupon a committee shall, on the ensuing day, be selected by lot in the following manner: The names of the members (a quorum at least being present) shall be written on distinct pieces of pa-

Mode of trial and proceeding in a contested election of senator.


To be similar to the trial and proceedings of a representative

Judgment thereon to vacate or confirm the seat of the defendant. Proceedings of the house giving such judgment.

Mode of taking depositions to be observed in a contest as to governor or lieutenant-governor

Petition and depositions, when presented.

Committee to be appointed & how.

1799.  per, as nearly similar as may be, each of which shall be rolled up so as that the name cannot be seen, and put by the clerk of the house into a box and placed on his table; after the said box has been well shaken, and the papers therein thoroughly intermixed, the clerk shall then, in the presence of the house, draw thereout one paper and deliver it to the speaker, who shall open and read aloud the name written thereon, and deliver it to the clerk, who shall enter the said name on his journal; and in this manner shall he continue to draw out, and enter, until twelve names be drawn out; and the persons so drawn shall form a select committee on the part of the house of representatives. The house of representatives shall immediately inform the senate of their having thus formed a select committee, who shall, within one day thereafter at farthest, proceed in the same manner to form a select committee from their house, consisting of five members. The time and place for the meeting of the select committee so appointed, shall be then directed by the joint vote of both houses, which time shall be within twenty-four hours after the appointment of the select committee by the senate. They shall respectively take an oath or affirmation, to be administered by the speaker of the house of representatives, to try the contested election, and to give true judgment thereon according to evidence, unless dissolved in manner hereinafter prescribed.
- Senate to be informed thereof, and to appoint committee on their part. Joint committee when to meet. Shall take an oath. Joint committee when to sit. When dissolved. Shall have power to send for persons, papers, and records, &c. Persons swearing falsely how punished.
- Sec. 7. The select committee so chosen, shall, on their first meeting, elect a chairman from amongst themselves; and shall sit from day to day, (Sundays excepted) at such hours as shall not interfere with their attendance in the legislature; but unless thirteen of their members be present, the committee, after waiting one hour, shall adjourn to the next day; and if the number of the committee shall unavoidably be reduced to less than thirteen members, and shall so continue for the space of three days successively, (Sundays excepted) the committee shall be dissolved, and another shall be chosen in manner aforesaid. The committee shall have power to send for persons, papers and records, and to examine all witnesses who may come before them, upon oath or affirmation, which the chairman or clerk of the committee may administer in their presence; and any person guilty of taking a false oath or affirmation before them, or of procuring another to do so, shall, upon conviction, be liable

to the same punishment as persons convicted of perjury are liable to, by the laws of this commonwealth. All determinations of the said committee shall be by a majority of votes. As soon as such committee shall have determined whether the election or return is legal and valid, or the contrary, the chairman shall make two reports thereof in writing, one of which shall be delivered to the speaker of the senate, and the other to the speaker of the house of representatives; which reports shall be entered on the journals of each house, and shall be final and conclusive. The said committee shall not only determine on the validity of the election of the person returned, and whose election is contested, but shall also decide which of the candidates has the greatest number of legal votes; which candidate shall thereupon be entitled to the seat or office which he had been voted for at such election. If any person so appointed a member of a select committee, shall at the time of such appointment, swear or affirm, that he cannot, without great inconvenience, serve on such committee; or if he be related to the person contesting, or to the person whose election is contested; or be liable to any other just objection, to be judged of by the house, he shall be excused, and another member substituted in his place. If any member or members of such committee, shall neglect to attend upon the committee, their names shall be reported in writing to the house of which they are members, and unless satisfactory reasons are given for their non-attendance, they shall be liable to be reprimanded by the speaker.

1799.

Chairman to report their determinations.

Further duty of the committee.

Who excused from serving on committee.

Penalty for failure to serve when appointed

Sec. 8. The sheriffs of the several counties, or in case of their inability to attend, their deputies, shall on the seventeenth day succeeding the day of the commencement of every general election, assemble in the capitol, in the town of Frankfort, and shall then and there compare the polls respectively taken at the election in their several counties, for governor and lieutenant-governor; and having ascertained, in the presence of the secretary for the time being, by faithful addition and comparison of the numbers on their respective lists, the person having the greatest number of votes, shall then and there certify such election under their hands and seals, in manner and form following, to wit: "Be it known, that we, A. B. sheriff of county, shall certify who has the most votes. Form of the certificate,

1799.



(or deputy sheriff, as the case may be,) C. D. of county," (and so on, reciting the name of the sheriff, whether principal or deputy, of each county in the commonwealth, where such elections are by law directed to be held,) "do hereby certify, that at an election held on the first Monday in this present month (August,) the electors qualified to vote for members to the house of representatives, have elected, to wit: E. F. governor for the commonwealth of Kentucky, and G. H. lieutenant-governor, in conformity to the laws and constitution of this commonwealth. Given under our hands and seals this day of August, in the year ."

To forward duplicates thereof, and the returns, and to whom.

Two fair duplicates of such certificate and return shall be made by the said sheriffs, under their hands and seals, in manner aforesaid, one of which shall be filed by the secretary for the time being, in his office, and the other be safely delivered to the governor and lieutenant-governor so elected, within eight days thereafter. If upon the ascertainment by the sheriffs as aforesaid, of the numbers of votes on their respective polls, two or more persons shall be equal and highest in votes, as governor or lieutenant-governor, the election shall be determined by lot by them, in the following manner: the names of all the persons who are highest and equal in votes, shall be written on distinct pieces of paper, as nearly similar as possible, each of which shall be rolled up as nearly alike as may be, and so that the name cannot be seen; and then deposited in a box. The sheriff whose poll contained the smallest number of votes, shall then, in the presence of the other sheriffs, and of the secretary for the time being, draw out of said box, without looking therein, one of said tickets, which shall be opened and read aloud by him, and then delivered to each of the other sheriffs, and to the secretary, who shall severally examine the same; and the person whose name is written on said ticket, shall be the governor or lieutenant-governor, as the case may be. In case the whole of the sheriffs or their deputies from the several counties, shall not meet at Frankfort on the seventeenth day after the commencement of the general election, the sheriffs so attending, shall not proceed to business until they do all meet, provided they do arrive at the end of the second day thereafter; but if they do not then assemble, those who have met, shall proceed to ascertain their polls as

When the votes are equally divided, how the election decided

Proceedings when all the sheriffs do not meet.

aforesaid, and every poll so neglected to be brought forward, shall not afterwards be taken into calculation, or regarded, unless the election be contested; in which case, a return of such polls shall be received and be allowed to be of the same validity, and liable to the same exceptions, as other returns duly made by the sheriffs as aforesaid.

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Sec. 9. When vacancies happen in either branch of the legislature, a writ of election shall issue, signed by the speaker of that house in which such vacancy exists, and directing therein, the time of such election. The sheriff or sheriffs to whom it shall be directed, immediately upon the receipt thereof, shall give public notice, by advertisement at the door of the court-house of his county, of the day and place of holding such election, and shall in every respect conduct himself as in the case of a general election.

In case of vacancy, writ of election to issue, and proceedings thereon.

Sec. 10. Depositions taken in any of the cases aforesaid, shall be liable to all legal exceptions at any time before trial. The commissioners of depositions, and their clerk, shall receive one dollar per day each, to be paid by the party summoning them; and should any of them fail to attend, after being legally summoned or notified as aforesaid, he shall forfeit and pay to the party, the like sum of one dollar, and moreover, pay all costs and charges incurred by such failure. The costs of such contested election, shall be paid by the party failing in the contest; unless it shall appear, and be so adjudged, that any person not duly elected, was returned by the sheriff or sheriffs as being duly elected, without the privity or procuration of such person; in which case, the sheriff or sheriffs shall pay the costs.

Depositions may be excepted to.

Allowance to commissioners & their clerk.

Penalty for non-attendance.

Who shall pay costs of contested elections.

Sec. 11. Any sheriff or deputy failing or refusing to perform any of the duties by this act required of him, shall forfeit and pay to the party injured by such neglect, or to any person who will sue for the same, a fine not exceeding five hundred dollars for every such refusal or neglect; but shall be entitled, in his defence, to shew any reasonable excuse, to be judged of by those before whom the prosecution shall be depending.

Penalty on

sheriff failing to perform his duty.

May defend

himself.

Sec. 12. In all cases of contested elections, the party in whose favor the decision shall be, shall be entitled to the costs which it shall be adjudged he has necessarily incurred in the contest, to be taxed by the clerk of the

The successful party in contested election entitled to costs.

1799. ^{How taxed and collected.} tribunal before whom the contest was determined: for which an execution shall issue against the party failing, in like manner as executions issued on judgments from courts of common law for damages.

^{When one office vacated by accepting another} Sec. 13. When any person in office, as representative, senator, sheriff, coroner, or any other, shall accept any new office or appointment, which by the constitution shall be incompatible with the former office, such former office shall be vacated.

^{State to be laid off into districts} Sec. 14. *And be it further enacted,* That this state shall be divided into two districts, that is to say, all the counties lying on the south side of the Kentucky river shall compose one district, and all the counties on the north side of the said river shall compose another district; and the counties of Franklin and Gallatin shall be annexed to the northern district. The persons qualified by law to vote for members to congress to the

^{Member to congress how elected.} house of representatives, shall assemble at their respective court-houses, on the first Monday in August, in the year 1801, and on the same day every two years thereafter, and then and there vote for some proper and discreet person, being an inhabitant of this state, who shall have attained the age of twenty-five years, and have been seven years a citizen of the United States, as a member to the house of representatives of the United States, for the term of two years. The sheriff of each county,

^{Sheriff's duty.} or in case of sickness or inability to act, one of the deputy sheriffs, being first sworn by a magistrate of the county to act impartially, shall proceed to elect one representative for each district; which election shall be held in the same manner, and under the same regulations prescribed in this act to elect representatives to serve in the legislature of this state. Each elector shall be entitled to the same privilege from arrest, and be subject to the like penalties and forfeitures for failing to attend and vote at such election, as are prescribed in the election of members to serve in the general assembly.

^{Privileges of the electors.} Sec. 15. *And be it further enacted,* That immediately after the poll is closed, the sheriff, judges and clerk, shall proceed to examine the votes, and after truly ascertaining the same, shall proceed to make return, which shall be delivered to the sheriff holding such election: which return shall be taken by the several sheriffs that are in

^{Poll to be examined, by whom, & how disposed of.} the southern district, to the court-house of the county of

Mercer; and by those of the northern district to the court-house of Fayette, the twelfth day after the said election commenced. The sheriffs when so assembled shall then and there compare the polls respectively taken at the election in their several counties in the respective districts; and having ascertained by faithful addition and comparison of the number on the respective lists, the person having the greatest number of votes upon the whole, giving their own vote, in case of the two highest on such polls having an equal number of votes, shall proceed to certify such election, under their hands and seals, in the manner and form following: "In the name of the state of Kentucky, to all who shall see these presents, greeting: Know ye, that we A. B. sheriff of county, or deputy sheriff, as the case may be) C. D. of county," (and so on, reciting the name of the sheriff, and whether principal or deputy, of each county in the district,) "composing one entire district, entitled by law to elect a member to the house of representatives of the United States, do hereby certify and make known, that at an election held on the first Monday of this instant (August) at the court-house of our respective counties, pursuant to law, the electors qualified to vote for members to the house of representatives, caused to be chosen, to wit: E. F. to represent this state as a member of the house of representatives of the United States. Given under our hands and seals, this day of August, one thousand eight hundred and ."

Two fair duplicates of such certificate and return, shall be made by the said sheriffs, under their hands and seals, in the manner before recited; one of which shall be delivered to the person elected to represent the district, and the other shall be transmitted to the governor, within thirty days thereafter. It shall be the duty of the governor to enclose to the congress of the United States, the certificates and return of the elections aforesaid, transmitted to him from the respective districts, without delay.

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meet, and for what purpose.

To certify who is elected.

Form of the certificate.

Duplicates thereof to be made out, and how disposed of

Governor to transmit to congress, certificates and returns of elections.

Sec. 16. Any sheriff or deputy sheriff refusing to take the votes when he shall be required by a candidate, or taking them in another manner than is herein before directed, or making or signing a false certificate or return of elections as herein before directed, shall forfeit and pay the sum of four hundred dollars, with costs, by ac-

Penalty on sheriffs for malfeasance in office.

1799. tion of debt by any person who will sue for the same, one half to his own use, and the other half to the use of the commonwealth.

Sec. 17. The sheriffs of the several counties shall receive, for their trouble and expence in conducting the said elections, the sum of one dollar per day, for the days they shall attend to compare the different polls, together with an allowance for ferriages, and three cents per mile for travelling to and returning from the county in which they shall meet for that purpose, to be paid by the public.

Sec. 18. *And be it further enacted,* That for the purpose of choosing four electors on behalf of this state, to vote for a president and vice-president, the several counties in this commonwealth shall be allotted into four districts, in the following manner, to wit: The counties of Nelson, Jefferson, Washington, Hardin, Greene, Cumberland, Shelby, Bullitt and Henry, shall compose one district; the counties of Lincoln, Mercer, Garrard, Madison, Pulaski, Logan, Warren, Barren, Christian, Livingston, Muhlenburg, Henderson and Ohio, shall compose another district; the counties of Fayette, Clarke, Jessamine, Woodford, Franklin, Montgomery and Gallatin, another district; and the counties of Bourbon, Scott, Mason, Harrison, Campbell, Pendleton, Boone, Bracken and Fleming, one other district. That when any of the counties aforesaid shall be divided, the new county shall belong to the same district to which it belonged before such division.

Sec. 19. That the persons qualified by law to vote for members to the general assembly in each county composing a district, shall assemble at their respective court-houses on the second Tuesday in November, in the year 1800, and on the same day in every fourth year succeeding, and then and there vote for some discreet and proper person, being an actual resident in such district for one year preceding, as an elector for such district, to vote for a president of the United States, in conformity to the constitution and laws of congress. The high-sheriff of each county, or in case of sickness or inability to attend, one of his deputies, being first duly sworn by a magistrate of the county to act impartially, shall conduct the said election; and the name of the voter shall be duly entered in a book, to be provided by

the sheriff, and the said election shall be conducted in the manner prescribed by this act for elections for representatives to the general assembly; and it shall be the duty of the court of each county, to appoint judges and a clerk, who shall be qualified, and discharge all the duties required in the case of elections for representatives.

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Sec. 20. Immediately after the election in the county, a fair list shall be made out, of the number of voters, with the votes for each person as an elector, which shall be certified by the judges and clerk of the election, who shall deliver the same to the sheriff who conducted the election; and such sheriff, together with the respective sheriffs who attended in the several counties in that district, (or in case of disability or sickness of such, then any other sheriff of the same county,) shall, on the eighth day after the day appointed for the election, assemble at the court-house of the county first named in the district, and there compare the votes taken at the election in their several counties; and having ascertained by a faithful addition, the person having the greatest number of votes upon the whole, giving their votes in case the two highest on such list shall have an equal number; and shall proceed to certify such election, under their hands and seals, in the manner and form following, to wit: "We, A. B. sheriff of _____ county," (or deputy sheriff, as the case may be,) "C. D. sheriff of _____ county," (and so on, reciting the name of the sheriff, and whether principal or deputy, of each county in the district,) "composing one entire district, entitled by law to appoint one elector, to vote for a president and vice-president of the United States, do hereby certify and make known, that at an election held on _____ at the court-house of our respective counties, pursuant to law, we have caused to be chosen, one person, to wit, _____ to represent the said district as an elector, to vote for a president and vice-president of the United States. Given under our hands and seals, this _____ day of _____ one thousand eight hundred and _____." Two fair duplicates of such certificate and return shall be made by the sheriffs, under their hands and seals, in the manner before recited, one of which shall be delivered to the person elected to represent the district, and the other shall be transmitted to the governor, within twelve days, under the penalty of two hundred dollars upon each she-

How the polls are to be examined and by whom the returns are to be made.

Form of the return of an elector.

Duplicate certificates to be made out, and how disposed of

1799. ruff holding such election ; and in case of failure therein, to be recovered by motion in any court of record, by the auditor, to the use of the commonwealth. The governor, upon receipt of the duplicates from the different sheriffs, shall advertise in the public gazette, the names of the persons so elected ; who shall assemble on the first Wednesday in December, at the capitol, in the town of Frankfort, and proceed to the election of a president, pursuant to the constitution and laws of congress for regulating their conduct. Every elector chosen pursuant to this act, and failing to perform the duties herein required, and also the duties prescribed by the laws of congress regulating his conduct, (unless prevented by sickness or unavoidable accident,) shall forfeit and pay one hundred dollars, to be recovered by the auditor, in any court of record, for the use of the commonwealth, by action of debt, bill, plaint, or information.

Electors how to be notified, and when & where to assemble.

Penalty on electors failing to attend.

Sec. 21. Any candidate, or person in his behalf, who shall directly or indirectly give any bribe or treat, in order to be elected an elector, shall forfeit and pay one hundred dollars, to any person who will sue for the same, in any court of record, to be recovered with costs, by action of debt.

Penalty on candidates for treating.

Sec. 22. The electors so appointed to choose a president and vice-president, shall be allowed for their travelling expences three cents per mile, and ferriages ; and for their daily attendance one dollar, to be paid by the treasurer, upon a warrant from the auditor ; and shall be entitled to the same privilege from arrest, as members of the general assembly.

Allowance to electors.

Sec. 23. And whereas it is directed by an act of congress, that whenever the office of president or vice-president shall be vacant, the secretary of state shall forthwith cause a notification thereof to be made to the executive of every state : *Be it enacted*, That whenever such notification shall be received by the governor of this commonwealth for the time being, he shall immediately by proclamation, appoint a day for the elections to be held in the different counties composing districts in this state, giving as much time for a general notification, as he may judge reasonable ; but so as to conform to the act of congress, requiring such elections to be within thirty-four days preceding the first Wednesday in December ; which election shall be conducted in the man-

Recital.

When elections are to be held to fill vacancies in the office of President.

her herein before directed. The sheriffs and electors shall perform the same duties, and be subject to the same penalties, and entitled to the same privileges and emoluments, as are prescribed in all other cases in elections.

1799.

Sec. 24. Whenever any elections shall be made of senators for this commonwealth, in pursuance of the constitution of the United States, the clerk of the house of representatives shall notify the same to the governor, who shall cause a credential to be made out, and the seal of the commonwealth to be affixed thereto, and shall sign the same, and cause it to be delivered to each senator; which credential shall be in the words following: "Kentucky, to wit. The legislature of this commonwealth, on the day of one thousand eight hundred and having in pursuance of the constitution of the United States of America, chosen

Credentials of a senator, by whom to be made out.

The form thereof.

Esquire, a senator; I being governor or chief magistrate of the commonwealth of Kentucky, do hereby certify the same to the senate of the United States. Given under my hand, and seal of the commonwealth, this day of one thousand eight hundred and ."

Sec. 25. Whenever the executive shall by virtue of the said constitution, make a temporary appointment of a senator, a credential shall be prepared in the form aforesaid, and shall be delivered to such temporary senator, in the words following: "Kentucky, to wit. A. B. Esquire, who was duly chosen senator for this commonwealth, in pursuance of the constitution of the United States of America, having died, (resigned or otherwise, as the case may be) during the recess of the legislature of the commonwealth; I being governor or chief magistrate of the commonwealth, have therefore thought fit by virtue of the said constitution, to appoint Esquire, to be and act as a senator for the commonwealth, until the next meeting of the legislature thereof. Given under my hand, and seal of the commonwealth, this day of one thousand eight hundred and ."

When a temporary appointment is made by the governor.

The form thereof.

Sec. 26. The act entitled "an act to reduce into one the several acts concerning elections," and every other act which comes within the purview of this act, is hereby repealed.

Repealing clause.

1799. This act shall commence and be in force from and after the last day of February next.

CHAPTER CCXXIII.

An ACT respecting the Public Arms of this Commonwealth, and for other purposes.

Approved December 21, 1799.

This act was declared unconstitutional in the case of *Stidgers versus Rogers* in the court of appeals—Printed decisions, page 64.

Preamble.

WHEREAS it is represented to the present general assembly, that the public arms which were delivered to the several county lieutenants of the following counties, to wit: Jefferson, Nelson, Mercer, Lincoln, Madison, Fayette and Bourbon, are likely to be lost: for remedy whereof,

Governor to call on certain persons for public arms deposited with them, and to order the same to be lodged at Frankfort, and repaired.

Sec. 1. *Be it enacted by the general assembly,* That the governor be, and he is hereby authorised and required to call upon the several commanding officers of each regiment in this commonwealth, and the late county lieutenants, or other field officers of the counties aforesaid, to render an account of all public arms which have been delivered them; and so soon as such information shall come to the governor, he shall order all such arms to be deposited at Frankfort, and appoint some fit person to take charge of them; and if in the opinion of the governor, from the best information he can procure, such arms require repairing, he shall direct accordingly.

How Thomas Morton shall receive money from the treasury, and for what.

Sec. 2. *And be it further enacted,* That the auditor, upon application to him by major Thomas Morton, shall, and he is hereby directed to issue his warrant on the treasurer for the full amount of any sum which shall appear due the said Morton, on account of a judgment recovered against him in Nelson quarter session court, by Peter Stiger, for services performed by the said Stiger, for the use of this commonwealth, and for which the judgment was recovered against the said Morton as aforesaid.

Recital.

And whereas it is further represented to the present general assembly, that the aforementioned Peter Stiger, who was employed by major Thomas Morton, to repair the arms which had been deposited in the hands of the said Morton, has neglected or refused to account with the

said Morton, or any other person, for the arms so deposited as aforesaid :

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Sec. 3. *Be it therefore further enacted*, That William Rogers be, and he is hereby authorised and empowered to call upon the said Peter Stiger, for a true account and return of all the arms deposited as aforesaid in his hands for repairing ; and if the said Stiger shall neglect or refuse to deliver in good repair into the hands of the said William Rogers, all the arms deposited in his hands as aforesaid, he shall recover the full value of such arms, and fifteen per centum damages, on motion of the said William Rogers, before the court for the said county of Nelson ; and the said William Rogers shall account for and pay the same into the treasury.

William Rogers to call on Peter Stiger to render an account of certain arms. The consequence of Stiger's failing to do so.

CHAPTER CCXXIV.

An ACT prescribing the mode of proceeding in removing from office, persons holding offices under this Commonwealth."

Approved December 21, 1799.

SECTION 1. *BE it enacted by the general assembly*, That when any person or persons shall desire that any civil officer shall be removed from office, on the address of two-thirds of each house of the general assembly, it shall be the duty of such person or persons, to state, in a petition to the next general assembly, the particular facts on the account of which such civil officers ought to be removed from office. The county court or court of quarter sessions for the county in which the officer so charged shall reside, shall, on the application of the person or persons petitioning, appoint three commissioners, who (or any two of them) shall take the depositions of such witnesses as shall appear before them, having first taken an oath before some magistrate to act impartially : *Provided however*, that the person so charged, shall have been furnished with a copy of the charges intended to be exhibited against him, and with a notice of the time and place appointed for the meeting of the commissioners, at least ten days previous to taking such depositions. Either of the commissioners may issue *subpoenas* for witnesses, on the application of either of the parties ; which witnesses shall be free from arrest while going, returning and attending, and subject to the same penal-

Any person wishing to remove any civil officer, in what manner he shall proceed.

County courts to appoint commissioners to take depositions.

Provido as to the person charged.

Commissioners to summon witnesses, who are to be free from arrest, &c.

1799. ties for failing to attend, as witnesses failing to attend the courts of quarter sessions; and any one of the commissioners may administer the necessary oath to such witnesses.

May, administer oaths.

How and when they shall meet, and their compensation.

Legislature to determine who shall pay costs.

Persons applying for the appointment of commissioners, and failing to prosecute, to pay costs, &c.

Depositions so taken, to be sent to the secretary, & laid before the general assembly.

Depositions and petition to be referred to a committee, who are to report their opinion thereon to the house.

Proceedings thereon in the house of representatives. In the senate; and by the governor.

Any officer found guilty of certain crimes, his office to be void. Clerk's duty.

Governor's.

Sec. 2. The commissioners shall meet from time to time, at the request of either of the parties, and the party requesting such meeting, shall give to the other a reasonable notice thereof; and the commissioners shall be allowed for their services, one dollar per day, each; and the legislature to whom the petition as aforesaid shall be presented, shall determine by whom the costs shall be paid.

Sec. 3. And in case any person or persons making application for the appointment of commissioners agreeably to this act, in consequence of which any costs shall accrue, and such person or persons shall fail to present a petition to the next general assembly, in conformity to the directions of this act, the person or persons so failing shall be liable to pay the whole of such costs.

Sec. 4. The depositions taken agreeably to this act, shall be certified by the commissioners, sealed up and sent by them to the secretary for the time being, to be by him laid before the general assembly, within ten days after their next meeting.

Sec. 5. The said petition and depositions shall be referred to a committee of the house of representatives, selected for that purpose; who shall take the same under consideration, and report their opinion thereon to the house, who shall immediately proceed to consider the same; and if two-thirds of the members present shall concur in passing a resolution for removing such officer, the said resolution shall be sent to the senate for their concurrence; and if two-thirds of the members present in the senate, shall also concur in the said resolution, an address shall be presented to the governor, agreeably to the directions of the constitution of this state.

Sec. 6. *Be it further enacted by the general assembly,* That in case any officer of this commonwealth shall be convicted of bribery, forgery, perjury, or other high crimes or misdemeanors, the commission of such officer shall be void; and it shall be the duty of the clerk of the court where such conviction takes place, to certify a copy of such conviction to the governor for the time being,

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who shall commission some other person to fill such vacancy.

1799.

This act shall commence and be in force from and after the end of the present general assembly.

To commence.

CHAPTER CCXXV.

An ACT to prevent the location of Lands actually settled.

Approved December 21, 1799,

See the preface to Chap. 220, of Vol. 1.

BE it enacted by the general assembly, That the donation lands heretofore granted to the trustees of certain academies for the benefit of the several counties within this commonwealth, shall not hereafter locate any of their donation lands, so as to include any actual settlement, with two hundred acres of land lying around the same, before the first day of November next; except such locations as may be made within the limits of the tract of country reserved to the use of seminaries by an act passed the tenth day of February, one thousand seven hundred and ninety-eight.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXXVI.

An ACT making an additional allowance to the Treasurer and Secretary.

Approved December 21, 1799.

SECTION 1. *BE it enacted by the general assembly,* That the treasurer be allowed the sum of one hundred dollars, in addition to the appropriation made to him at the present session, in order to enable him to employ an additional clerk for the ensuing year.

Sec. 2. *And be it further enacted,* That the secretary be allowed an additional sum of one hundred dollars.

This act shall be in force from and after the passage thereof.

NOVEMBER SESSION,

1799.

CHAPTER CCXXVII.

An ACT for the relief of certain Spies.

Approved December 21, 1799.

John Stephenson, James Pickins, William Hinkson and Jacob Vanmetre, having been called on by the executive, in the year 1793, to act as spies on the frontiers of Bourbon, were by this act allowed five shillings per day out of the treasury, for that service.

CHAPTER CCXXVIII.

An ACT for the relief of John Finn.

Approved December 21, 1799.

John Finn was allowed by this act to locate and survey two hundred acres of waste and unappropriated lands south of Green river, under the same restrictions, rules and regulations, as those settlers were who had settled themselves on military claims; but the reason for passing this act is not assigned.

CHAPTER CCXXIX.

An ACT compelling the Clerk of the Commissioners to account for Monies received by him.

Approved December 21, 1799.

The clerk of the commissioners for the Green river lands having received more money than had been appropriated by the act constituting that board, and the balance remaining in his hands, this act directed him to render an account of the whole transaction to the auditor of public accounts, on or before the first day of June next; and on failure to comply, subjected him to the fines, penalties, interest, and damages, inflicted by law on delinquent sheriffs.

A prosecution was instituted under this act, and the cause was taken by the clerk to the court of appeals, who determined that so much of the act as subjected the defendant to the fines, penalties, interest, and damages, imposed on delinquent sheriffs, was unconstitutional.—Vide the case of Caldwell vs. the commonwealth, printed decisions, 150.

CHAPTER CCXXX.

An ACT authorising Thomas Thweatt to survey a certain location.

Approved December 20, 1799.

Thomas Thweatt was entitled to 1000 acres of land, for military services in the revolutionary war, which he had located within the military boundary; but from having been badly wounded, and other disappointments, had been unable to survey and register it in legal time. This act authorised him yet to survey and register it, provided his survey should not interfere with any of the Green river settlement rights.

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CHAPTER CCXXXI.

1799.

An ACT to amend an act entitled "an act authorising Trustees to sell the Lands of Maurice Nagle, deceased, for the benefit of his Creditors," and for appointing new Trustees.

Approved December 16, 1799.

The trustees appointed by a former act (*Vide* Chapter 27, of this Volume,) having declined, three others were appointed by this act, with general powers, and a particular authority to submit to arbitration, contests respecting his estate, and to employ counsel where they should deem it expedient. A perpetual succession was given to these trustees, and they were made accountable to the Mercer county court.

CHAPTER CCXXXII.

An ACT authorising James Lanier to erect a Mill-Dam across the South Fork of Licking.

Approved December 18, 1799.

James Lanier was by this act authorised to erect a mill-dam on the South fork of Licking, on entering into bond, with security, in the penalty of 3000 dollars, in the county court of Pendleton, conditioned for clearing out and keeping in proper repair, a canal at the end of his dam, thirty feet wide.

CHAPTER CCXXXIII.

An ACT giving further time to the Sheriff of Bullitt County to collect the arrearages of Taxes, and for other purposes.

Approved December 21, 1799.

This act requires the county court of Bullitt to rectify some errors in the amount of taxes, occasioned by the negligence of one of the commissioners, and gives the sheriff six months longer to collect arrearages.

CHAPTER CCXXXIV.

An ACT to amend an act entitled "an act authorising a sale of part of the estate of William Montgomery, deceased."

Approved December 9, 1799.

Vide Chap. 168, *ante*.

Thomas Montgomery having, by mistake, sold some land which he was not authorised by the former act to sell, this act authorises him to convey what he had sold, prohibits him from selling 500 acres which that act had authorised him to, and authorises him to sell 200 acres on the head of Green river.

1799.

CHAPTER CCXXXV.

An ACT authorising the Securities of Rowland Madison deceased, to collect the Surveyor's Fees due to said Madison.

Approved November 18, 1799.

Rowland Madison having neglected to pay the fees due to the Transylvanian seminary, this act provides that his securities may collect the fees due to him and discharge that claim;

CHAPTER CCXXXVI.

An ACT legalizing the appointment of certain Commissioners, and for altering certain Court days, and giving further time to certain County Courts to lay their Levies.

Approved November 21, 1799.

This act altered the county court days of Pendleton, Harrison, Mercer, Jefferson and Madison, and confirmed the appointment of commissioners in Logan and Bullitt.

CHAPTER CCXXXVII.

An ACT to alter the time of holding Courts in the County of Jefferson, and certain other Courts.

Approved December 21, 1799.

This act altered the time of holding quarter session courts in the counties of Shelby, Jefferson, Henry, Bullitt, Nelson and Garrard, lengthened the terms in Nelson, Mercer and Fayette, and altered the times of holding the county courts in Jefferson, Shelby, Henry and Bullitt.

CHAPTER CCXXXVIII.

An ACT altering the time of holding Courts in the Counties of Warren, Christian, Logan and Cumberland.

Approved December 12, 1799.

CHAPTER CCXXXIX.

An ACT remitting certain Taxes.

Approved December 21, 1799.

BE it enacted by the general assembly, That one half of the public taxes on lands, negroes, and horses, for the year 1799, to be collected in the year 1800, be, and the same are hereby remitted.

This act shall be in force from the passage thereof.

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CHAPTER CCXL.

1799.

An ACT to legalize the proceedings of the Court of Quarter Sessions for the County of Logan.

Approved December 9, 1799.

WHEREAS doubts have arisen as to the legal propriety of the proceedings of the court of quarter sessions for the county of Logan, inasmuch as the records of the said court have, until very lately, been signed by Ebenezer Alexander, Esquire, one of the judges of the said court, appointed and commissioned in the room of Burwell Jackson, the presiding judge of the said court, who resigned; the said Ebenezer Alexander, supposing from the wording of his commission, that he was to supply the place of the said Burwell Jackson, as presiding judge of the said court of Logan:

BE it enacted by the general assembly, That all the proceedings of the said court, which have been signed by the said Ebenezer Alexander, shall be, and the same are hereby ratified and confirmed, as fully as if the said proceedings of the said court had been signed by the senior judge then in commission, and not further or otherwise: *Provided however,* that no prosecution, action, or suit of any kind, heretofore instituted, which may be founded on the proceedings of the said court, shall be in any wise affected by this act; but may proceed as if this act had not been passed.

CHAPTER CCXLI.

An ACT to legalize the proceedings of the County Court of Harrison.

Approved December 13, 1799.

The justices of Harrison county court having adjourned to dinner, dispersed, would not be convened, and the orders remained unsigned. This act makes them as valid as if they had been signed.

CHAPTER CCXLII.

An ACT legalizing the proceedings of the County Court of Bullitt in the appointment of Nicholas Crist, as Commissioner of the Tax.

Approved December 21, 1799.

NOVEMBER SESSION,

1799.

CHAPTER CCXLIII.

An ACT concerning the Marriage of Elizabeth Adams.

Approved December 9, 1799.

This act authorises a divorce of Elizabeth from William Adams, on a jury's finding that he has deserted her, and lives in adultery with another woman, and directs the jury to find the value of one-third of his property, and appropriates it to the maintenance of Elizabeth and her children.

CHAPTER CCXLIV.

An ACT concerning the Marriage of Polly Rogers.

Approved December 9, 1799.

This act authorises a divorce of Polly from Robert Rogers, on a jury's finding that he has deserted her altogether, and directs the jury to find the value of one-third of his property, for which judgment is to be entered.

CHAPTER CCXLV.

An ACT concerning the Marriage of Polly Russell.

Approved December 16, 1799.

This act authorises a divorce of Polly from William Russell, on a jury's finding that he has treated her inhumanly, or deserted her for seven years, or refused to contribute any thing to her support.

CHAPTER CCXLVI.

An ACT for selling part of a tract of land and mills, of which Richard Parker died seized and possessed.

Approved November 30, 1799.

CHAPTER CCXLVII.

An act for selling part of the real estate of William Pitman, deceased, for the benefit of Thomas Pitman, his security.

Approved December 9, 1799.

CHAPTER CCXLVIII.

An ACT for legalizing the sale of the Lands of which Robertus Samuel Brands died seized, made by his Executor for the benefit of his Creditors, Nicholas and Isaac Gouverneur.

Approved December 9, 1799.

WHEREAS it appears that Robertus Samuel Brands, a naturalised citizen, hath departed this life, indebted to

Isaac Gouverneur and Nicholas Gouverneur, citizens of the state of New-York, a large sum of money, which they had paid for, and which was still due to them from the said Robertus Samuel Brands; that Johannes Brands, his son, and executor, (a resident of the Island of Curacoa) an alien, made a power of attorney to Nicholas Gouverneur, to sell and convey all the lands and interests in lands in Kentucky, belonging to the said Robertus Samuel Brands in his life time, for the payment of the debt aforesaid, amounting to seven thousand dollars; and that a sale and conveyance has been made for five thousand acres, and five thousand eight hundred and twelve acres of land, of the said Robertus Samuel Brands, lying on the waters of Plumb creek, in the county of Shelby, by virtue of said power:

1799.

Be it therefore enacted, That all the right of the two tracts of land, containing five thousand acres, and five thousand eight hundred and twelve acres, lying on Plumb creek, in the county of Shelby, which the said Robertus Samuel Brands had, before, and at his death, and the right of Johannes Brands, his legal heir and representative, shall be, and is hereby vested in the said Isaac Gouverneur and Nicholas Gouverneur, and their heirs, in the same, and in as ample a manner, as if the said Robertus Samuel Brands had done in his life time, or as if the said Johannes Brands had been a naturalised citizen when he executed the power of attorney for the sale and conveyance of the said lands.

Sales made by
the executor of
R. S. Brands,
legalized.

This act shall commence and be in force from and after the passage thereof. To commence.

CHAPTER CCXLIX.

An ACT for selling part of the Lands whereof James Nourse died seized and possessed.

Approved December 13, 1799.

The Bairdstown district court were authorised to decree the sale on the application of the administrators and guardians of the infant children. The sale was to be made for the payment of his debts, and the support of his family.

CHAPTER CCL.

An ACT authorising the sale of certain Lands whereof Ambrose Gordon died seized.

Approved December 12, 1799.

For the payment of his debts, and the support of his family.

NOVEMBER SESSION,

1799.

CHAPTER CCLI.

An ACT for the relief of Lawrence Gillock.

Approved December 12, 1799.

He had settled on vacant land and made considerable improvements, but from unavoidable misfortunes, had failed to procure a certificate from the Green river commissioners. This act allows him 200 acres, including his improvement, on paying 80 dollars.

CHAPTER CCLII.

An ACT for the relief of Sena Hogland, and the heirs of Amos Hogland, deceased.

Approved December 21, 1799.

In consideration of the disappointments and death of the husband, the widow and children were allowed 200 acres of land, for thirty dollars per hundred acres.

CHAPTER CCLIII.

An ACT for the relief of James Atwood, and for the confirmation of the Marriage between John Burch and Polly M'Kinley.

Approved November 29, 1799.

James Atwood, a justice of the peace, had married John Burch to Polly M'Kinley, believing he had a right to do so. This act confirms the marriage, and releases him from the penalties incurred.

CHAPTER CCLIV.

An ACT for the relief of John M'Kinney, and his Securities.

Approved November 21, 1799.

A judgment had been obtained against John M'Kinney, as sheriff of Bourbon, for taxes, which he did not collect, because he thought he was not authorized to do it. This act releases him from damages on account of non-payment, and gives him three months to pay the principal.

CHAPTER CCLV.

An ACT for the relief of Richard Beall, Sheriff of Washington County.

Approved November 29, 1799.

He was allowed four months to complete his collections.

CHAPTER CCLVI.

An ACT for the relief of the Sheriff of Harrison.

Approved December 21, 1799.

He was allowed nine months to complete his collections.

CHAPTER CCLVII.

1799.

An ACT directing the Governor to procure a Bell for the use of the State-House.

Approved December 12, 1799.

Two hundred dollars were appropriated for the purchase, and the governor was required to cause it to be erected in the cupola or steeple of the capitol, and to certify to the auditor the amount of the charge.

CHAPTER CCLVIII.

An ACT giving further time to Richard Taylor to complete the Wall around the Penitentiary House.

Approved December 20, 1799.

He was allowed till the first of May.

CHAPTER CCLIX.

An ACT directing the payment of Money to John Leiper and others.

Approved December 16, 1799.

Micajah Harp, for sundry most unheard of murders, had been committed to the Danville district jail, from whence he escaped; and the governor offered 500 dollars reward for apprehending him. Leiper and his associates, undertook it, and incurred very considerable expence and toil in pursuit of him, and when they found him, were under the necessity of killing him, before they could catch him—by which, it seems, they were not entitled to the reward under the proclamation. This act gives it to them.

CHAPTER CCLX.

An ACT for making Compensation to certain Witnesses.

Approved December 21, 1799.

They had been summoned before a committee of the legislature, respecting the conduct of a justice of the peace, and had received no compensation. This act entitles them to as much as witnesses at that time (not saying when) were entitled to for attending the court of appeals.

CHAPTER CCLXI.

An ACT for the relief of Captain Underwood, and his associates.

Approved November 29, 1799.

They were Chickasaw Indians; and this act allowed them fifty dollars, without saying why or wherefore.

1799.

CHAPTER CCLXII.

An ACT for forming a new County out of the Counties of Bourbon and Mason.

Approved December 18, 1799.

Boundaries.

SECTION 1. *BE it enacted by the general assembly,* That all that part of the counties of Bourbon and Mason, included in the following boundaries, to wit : Beginning at the mouth of Fleming creek, and to run thence along the Fleming county line, to the mouth of the Flat fork of Johnston's fork of Licking ; thence on a straight line to a beech tree, marked, six miles from the Lower Blue Licks, near the middle trace ; thence a straight line to where the Bracken line crosses the said North fork ; thence with the said Bracken line to Licking river, thence up said river to the Bourbon and Harrison line ; thence with the said line so far that a line run parallel with the general course of that part of Licking river, which is included between the Upper Blue Licks and the point where the Bourbon and Harrison line strikes the said river, shall cross the Limestone road at an ash stump, near the Irish Station, the beginning place of certain surveys made for Hawes and others ; the said line to continue the same course to the Montgomery line ; thence with the said line to Licking river ; and thence down the said river to the place of beginning, shall be one distinct county, called and known by the name of Nicholas. But the said county of Nicholas, shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeably to the ratio established by law.

Name.

When to be represented.

County court when to be held

Where and when justices to meet and for what.

Sec. 2. A court for the said county shall be held by the justices thereof, on the first Monday in every month, in which courts of quarter sessions are not hereafter directed to be held.

Sec. 3. The justices to be named in the commission of the peace for the said county, and the justices of the court of quarter sessions thereof, shall meet at the house now occupied by Martin Baker, jun. in the said county, on the first court day after the said division shall take place, and being duly qualified, and a sheriff also being duly qualified to act, the said justices shall proceed to fix on a place for holding courts in said county, at or as

near the centre as eligibility, convenience, and situation will admit ; and thereafter the county court shall proceed to erect the necessary public buildings at such place ; and until such buildings are completed, they shall appoint such place for holding courts as they shall think proper : *Provided always*, that the appointment of a place for the erecting the public buildings, shall not be made unless a majority of the justices of both courts concur therein.

1799.

Sec. 4. Each court shall appoint its own clerk, a majority of such court concurring therein ; but a majority of those present, on any court day, may appoint a clerk *pro tempore*, until a clerk is permanently appointed as aforesaid.

Each court to appoint its own clerk, and how.

Sec. 5. The court of quarter sessions for the said county, shall be held in the months of March, May, July, and November, annually.

Court of quarter sessions when held.

Sec. 6. It shall be lawful for the sheriffs of Bourbon and Mason, to collect and make distress for any public dues or officers' fees, which shall remain unpaid by the inhabitants of said county at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made. And the courts of the said counties of Bourbon and Mason, shall have jurisdiction in all actions and suits, either in law or equity, which shall be depending before them at the time of such division, and shall try and determine the same, issue process, and award executions thereon. And the said county of Nicholas shall be annexed to, and be under the jurisdiction of the Paris district court, and shall be hereafter considered as a part of that district.

Power of the sheriffs of Mason & Bourbon.

Jurisdiction of the courts of Bourbon and Mason.

This county made a part of Paris district.

This act shall commence and be in force from the first day of June next.

To commence.

CHAPTER CCLXIII.

An ACT authorising the Justices of the Court of Quarter Sessions and County Court of Bracken, to fix on a permanent seat of justice in said County, in the month of February next.

Approved December 13, 1799.

WHEREAS by an act entitled " an act for erecting a new county out of the counties of Mason and Campbell," it is provided that the justices of the court of quar-

1799. *ter sessions and county court for the county of Bracken, shall, at their July court in the year 1800, fix on a permanent seat of justice for the said county; and as inconvenience will arise from the lateness of the season at which the public buildings of the said county may be commenced, if the seat of justice therein, should be fixed in the month of July: therefore,*

Be it enacted by the general assembly, That the justices of the court of quarter sessions and county court for the county of Bracken, be, and they are hereby authorised, at the February court next, to fix on a place for the permanent seat of justice for the said county, a majority of the justices concurring therein; any law to the contrary notwithstanding.

This act shall commence and be in force from the passage thereof.

CHAPTER CCLXIV.

An ACT regulating the time of holding the Danville District Court.

Approved December 14, 1799.

This act changed the term from the third Monday in December, to the third Monday in January.

CHAPTER CCLXV.

An ACT for Paving the Main-Street in Lexington.

Approved December 20, 1799.

WHEREAS it is represented to the present general assembly, that sundry inhabitants of the town of Lexington are desirous of continuing the paving and railing the Main-Street, in the said town: therefore,

Be it enacted by the general assembly, That the trustees in and for the said town, be, and they are hereby authorised to continue the railing and paving the Main-Street in said town, from the corner of John Postlethwait and Thomas Whitney, to the extreme corner of Adam Rankin and Andrew Riggs, on the said street, under the same rules and regulations as were heretofore prescribed by law for railing and paving the said street in the said town.

This act shall commence and be in force from and after the passage thereof.

IX. YEAR OF THE COMMONWEALTH.

369

CHAPTER CCLXVI.

1800.

An ACT for the Appropriation of Money.

Approved December 21, 1799.

In addition to the usual and ordinary appropriations, this act made one to the directors for building the Penitentiary, of eight thousand six hundred and sixty-six dollars and sixty-six cents.

November Session, 1800.

CHAPTER CCLXVII.

An ACT allowing the United States the use of Prisons in this State

Approved November 25, 1800.

Vide Chap. 35 of this Vol.

BE it enacted by the general assembly, That the marshal for the court of the United States within this state, shall have a right to use any county or district prison within this commonwealth, for the imprisonment of any one in his custody by legal writ or process, in the same manner as the sheriffs of the respective counties have a right to use such prisons. And all jailors and keepers of jails within this commonwealth, are hereby directed to receive and keep such prisoners delivered them by the marshal or his authorised deputy, in the same manner as if the prisoner were delivered him by the sheriff of the county in which his jail is fixed: *Provided however*, that all charges for keeping and feeding, and other incidents, shall be made by such jailor against the marshal, and not against the county or district.

This act shall take effect from its passage.

CHAPTER CCLXVIII.

An ACT authorising Clerks of Courts to administer Oaths in certain cases.

Approved November 25, 1800.

By the chancery law of 1796, magistrates might administer oaths to complainants on bills for injunction; and this was in conformity with the Vir-

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1800.

ginia law. By an act of November session, 1793, such bills were required to be sworn to before the judges or a judge of the district or quarter session courts, as the case might be.

SECTION 1. *BE it enacted by the general assembly,* That upon application of any person to the clerk of any county court within this commonwealth for a marriage license, the clerk shall, without fee, administer the oath necessary to be taken by any witness to the certificate produced to him of the consent of the parent or guardian; and shall enter in a book provided by him for that purpose, the name of the witness so sworn.

Sec. 2. *And be it further enacted,* That the clerk of any court within this commonwealth, wherein bills of injunction shall be filed, may administer any oath which the law requires either the plaintiff or defendant to take in the prosecution of such suits.

This act shall be in force from and after the passage thereof.

CHAPTER CCLXIX.

An ACT concerning the Town of Louisville.

Approved November 26, 1800.

Preamble.

WHEREAS it is represented to the present general assembly, that sundry persons have heretofore purchased lots in the town of Louisville, in the county of Jefferson, and have not hitherto procured deeds of conveyance for the same from any board of trustees or commissioners of said town: And whereas it is also represented that a number of deeds which have been made by the former trustees for lots in said town, have not been recorded; and from deaths and other unavoidable causes, cannot now be admitted to record for want of sufficient acknowledgment or proof: And whereas it is also represented that the act of the general assembly, passed in the year of our Lord, one thousand seven hundred and ninety-five, is partial in its operation, and requires amendment in sundry respects: therefore,

Trustees authorized to make deeds in certain cases.

Sec. 1. *Be it enacted by the general assembly,* That the present trustees of the town of Louisville, or a majority of them, or any future board of trustees, or a majority of them, shall, and they are hereby declared to have full power and authority to make deeds of conveyance of lots in said town, to those persons or their as-

signees, who may be entitled thereto; and to record deeds in those cases where the deeds already granted have not been recorded, owing to the causes aforesaid. 1800.

And be it further enacted, That in all cases where the collector appointed by the trustees of said town, shall make distress for the non-payment of taxes, he shall and may proceed to sell and convey the property in like manner, and under the same rules and regulations as in the case of a sheriff: *Provided*, that the said collector shall be liable to the action of the party aggrieved by unreasonable seizure or distress; and where any damages shall be found in such suit, the plaintiff shall recover full costs.

Sec. 2. And be it further enacted, That the present, or any future board of trustees, shall and may, at such time as may be expedient, appoint a commissioner for the purpose of procuring lists of all such property as the board shall determine fit subjects of taxation; that the said commissioner shall, before he begins to exercise the duties of his office, make oath before some justice of the peace, that he will faithfully execute the duties of his said office of commissioner, according to the best of his skill and ability, without favor, affection, or partiality: he shall then without delay, proceed to call on each person resident within the limits of the town, or holding lots therein, or his or her agent (if any such, there be,) for a written list of his or her property; which being corrected (if necessary) and distinctly read over by the commissioner to the person delivering the same, he or she shall make oath or affirmation (which the commissioner is hereby authorised to administer,) to the truth of such list: and the said commissioner shall adjust the value of the property with the owner thereof, and note the amount of such valuation on such list; and in case of neglect or refusal on the part of the person so called upon, either to give a list of his or her property, as aforesaid, or to adjust the value thereof with the commissioner, it shall and may be lawful for the commissioner to make out a list of the property of such delinquent from the best information he can procure, and to fix the value thereof himself; which lists, with the valuations aforesaid, shall be thereafter in a convenient time returned by the commissioner aforesaid, to the board of trustees, that they may be enabled thereby to lay and apportion the

Collector may make sale, &c. in cases of distress.

Provido.

Trustees may appoint a commissioner.

Who shall take an oath.

His duty.

To call on persons for lists of property.

Commissioner may settle the value of property.

Lists to be returned.

1800. tax collectable under the act of 1795, in such sort as to them may seem just: *Provided however*, that if any person shall conceive him or herself aggrieved by such valuation, he or she may appeal to the next board of trustees thereupon, who shall, if they see cause, reduce the estimate or valuation so made by the commissioner aforesaid; and if any person liable to the payment of any part of the tax aforesaid, under this or the last mentioned act of assembly, shall give or deliver to the commissioner aforesaid, a false or fraudulent list of persons or property subject to taxation, he or she shall be liable to a fine of forty shillings, to be sued for in the name of, and recovered by the trustees, or a majority of them, in the like manner as sums of that amount are now by law recoverable, and to be applied in aid of the fund hereafter mentioned, for erecting the market-house in said town, in such way as the trustees may direct.

Sec. 3. And be it further enacted, That if the sheriff of the said county of Jefferson shall fail or refuse annually to hold the election of trustees, and make return thereof, as required by the act aforesaid, he shall, for such failure, neglect or refusal, be liable to pay the sum of ten pounds, to be recovered with costs, and applied as aforesaid; and in case the sheriff should fail to hold the said election, it shall be the duty of the clerk, under the direction of any two of the board of trustees, to proceed and hold the same, having previously advertised the day on which the same shall be held: *Provided also*, that the former board of trustees shall continue in office until other trustees shall be elected.

Sec. 4. And be it further enacted, That the tax of thirty pounds annually, which hath been heretofore restricted to be collected from the inhabitants within the limits of the half acre lots, shall be extended so as to include the whole of the said town of Louisville; any thing in the said act of 1795, to the contrary thereof in any wise notwithstanding.

Sec. 5. And be it further enacted, That the inhabitants of the said town shall hereafter be exempt from working on the roads out of the town; except however, that they shall be liable as heretofore, to keep in repair the road leading from Louisville to the lower landing.

And the trustees of the said town shall, when to them may seem expedient, appoint some person residing in

Appeal how made.

Penalty for giving false list.

How recovered.

Penalty on the sheriff for failing to hold an election.

How an election may be had in that case.

Former trustees to continue.

Tax extended to the whole town.

Inhabitants exempted from working on roads.

Surveyor of the streets to be appointed.

town, surveyor of the streets thereof, who shall, from 1800.
time to time, call upon the inhabitants thereof, to meet
on a certain day and at a certain place, for the purpose of
working upon the streets. And every such person so ^{His duty.}
appointed, and failing or refusing to attend for the pur- ^{Penalty for fail-}
pose aforesaid, (after having received three days notice ^{ing to attend.}
at least, of such appointment, from the clerk of the board,
by delivering him a copy thereof,) shall be liable for e-
very such failure, to pay the sum of fifteen shillings.
And if any person resident in said town, and who by
law is compellable to work on a public road, shall fail or
refuse, after having received one days previous notice
from the surveyor aforesaid, of the time and place, to
attend with proper tools, or shall refuse to labor under ^{Penalty for not}
the direction of the surveyor, after attendance on the ^{working on the}
streets, (or find some person equally able to work in his ^{streets.}
room,) the person so refusing, shall be liable to pay the
sum of six shillings, recoverable in the manner, and to
be applied as before mentioned.

Sec. 6. *And be it further enacted,* That the sum of ^{Part of the tax}
twenty-five pounds, (being part of the annual tax, and ^{to be applied to}
which was heretofore directed to be applied towards ^{the building a}
clearing and keeping the streets in repair,) shall hereafter ^{market-house.}
be appropriated towards the building a market-house on
the public ground in said town, under the superinten-
dence of the board of trustees.

Sec. 7. *And be it further enacted,* That the harbor at ^{Trustees to}
the mouth of Beargrass shall, and is hereby declared to ^{have jurisdic-}
be under the direction of the said trustees, or a majority ^{tion over the}
of them; and they are hereby vested with full power ^{harbor.}
and authority, from time to time, to pass such by-laws, ^{To have power}
and make such regulations as to them may seem proper, ^{to make by-}
for the cleansing and keeping the said harbor in good ^{laws for certain}
order, and for the landing and mooring boats therein : ^{purposes.}
Provided, such by-laws shall be consistent with the con- ^{Proviso.}
stitution and laws of this commonwealth, and of the Uni-
ted States.

Sec. 8. *And be it further enacted,* That if any person
shall be guilty of running or racing horses in the streets, ^{Penalty for ra-}
or playing or throwing bullets, or shooting at a mark, ^{cing or running}
within the limits of the half acre lots of said town, he ^{horses, &c.}
shall for every such offence, forfeit and pay the sum of
eighteen shillings, to be recovered and applied in the
manner that other fines mentioned in this act, are direc-
ted to be.

1800. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXX.

An ACT to amend an act entitled "an act to reduce into one the several acts concerning Wills, the distribution of Intestates' estates, and the duty of Executors and Administrators."

Approved November 26, 1800.

See Vol. I. Chap. 293, and Chap. 282, of this Vol.

Slaves deemed real estate: *BE it enacted by the general assembly, That slaves, so far as respects last wills and testament, shall hereafter, within this commonwealth, be held and deemed as real estate, and shall pass by the last will and testament of persons possessed thereof in the same manner, and under the same regulations as landed property; and nothing contained in the act entitled "an act to reduce into one the several acts concerning wills, the distribution of intestates' estates, and the duty of executors and administrators," or in the fourth section thereof, which enables persons above the age of eighteen years, to dispose of their chattels by will, shall be construed to contravene this act. Every act or part of an act that comes within the purview of this act, shall be, and the same are hereby repealed.*

Shall pass by will, &c. as landed property.

Repealing clause.

To commence.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXI.

An ACT giving further time to return Platts and Certificates to the Register's Office.

Approved November 27, 1800.

See the preface to Chap. 38, of Vol I.

BE it enacted by the general assembly, That the further time of one year, from and after the twenty-first day of December, one thousand eight hundred, be allowed the owners of platts and certificates of surveys, made within the time prescribed by law, to return the same to the register's office; in which time the register of the land-office shall receive all platts and certificates of survey, although not returned within the time heretofore limited by law; and such land shall not be con-

sidered forfeited or liable to forfeiture on that account.
 This act shall commence and be in force from and
 after the passage thereof.

1800.

 CHAPTER CCLXXII.

An ACT concerning Public Advertisements in certain cases.

Approved November 29, 1800.

BE it enacted by the general assembly, That no memorial or petition shall be received, praying for the division of a county, changing the place of holding any court, or any other local matter, unless the purport of such petition or memorial shall have been fixed at the door of the court-house or other place of holding courts of the county where such alteration is proposed, two courts at least previous to offering the same; and that no petition or memorial shall be received, or bill brought in for establishing ferries or other matters affecting private right or property, unless the party or parties interested shall have had one month's notice thereof, if known to the petitioner or petitioners, and if not known, the purport of such memorial, petition or bill shall be set up at the court-house or other place of holding court, in the manner before directed, and also three times inserted in such public newspaper as the law directs, one month before offering or moving for the same.

 CHAPTER CCLXXIII.

An ACT to incorporate the Shareholders and Directors of the Lexington, Georgetown and Danville Libraries.

Approved November 29, 1800.

SECTION 1. *BE it enacted by the general assembly, That Thomas Hart senior, James Morrison, John Bradford, James Trotter, John A. Seitz, Robert Patterson, John M'Dowel, Robert Barr, William M'Bean, James M'Cown, Caleb Wallace, Fielding L. Turner, Samuel Postlethwait and Thomas Bart, and the rest of the subscribers who have subscribed, or who may hereafter subscribe to the Lexington library association, shall be a body politic and incorporate, by the name and style of*

Trustees for
 Lexington li-
 brary.

1800.

'The Sharers of the Lexington Library,' and by that name shall have power to sue and be sued, implead and be impleaded, and to have and make use of a common seal.

For Danville
library.

Sec. 2. *And be it further enacted*, That Willis Green, William M'Dowell, Robert Craddock, James Speed senior, James Birney, Woodson Wren, Ephraim M'Dowel, Joshua Barbee, Barnabas Hughes, James Speed junior, and John Rochester, and the rest of the subscribers who have subscribed, or who may hereafter subscribe to the Danville library association, shall be a body politic and incorporate, by the name and style of 'The Sharers of the Danville Library,' and by that name shall have power to sue or be sued, implead and be impleaded, and to have and make use of a common seal.

For Georgetown
library.

Sec. 3. *Be it further enacted*, That John Hawkins, John Thompson, John Hay, John Payne, Robert Sanders, Samuel Shepherd, Richard Johnston, William Garrett Johnston, William Storey, Josiah Pitts, and Joel Craig, and the rest of the subscribers, or who may hereafter subscribe to the Georgetown library association, shall be a body politic and incorporate, by the name and style of 'The Sharers of the Georgetown Library,' and by that name shall have power to sue and be sued, implead and be impleaded, and to have and make use of a common seal.

Trustees to
meet & choose
directors.

Sec. 4. The shareholders of the Lexington library, shall meet at the house of John M'Nair, in the town of Lexington; and the shareholders of the Danville library, shall meet at the house of Richard Davenport, in the town of Danville, on the first Saturday in January, 1801; and the shareholders of the Georgetown library, shall meet at the house of Samuel Shepherd, in Georgetown, on the same day and year aforesaid; and on the first Saturday in every January thereafter, at such place or places as they may appoint, for the purpose of electing five persons as directors for the shareholders of each library, all of whom shall be shareholders, and continue in office one year, who shall take an oath or affirmation, faithfully and impartially to do their duties: *Provided*, that if no election takes place, at any of the succeeding periods, the directors last in office shall continue until the election in the ensuing year.

To choose a
chairman.

Sec. 5. The directors so elected shall choose from among themselves chairmen, and shall at all times have,

hold, possess and exercise all the authority invested in them by this act, or the articles of the associations respectively; they shall have power to fill any vacancies which may happen in their own bodies, whether occasioned by death, resignation or refusal to act, and to call general meetings of the shareholders by public advertisement, whenever they may deem it necessary.

1800.

Sec. 6. Fifteen shareholders of either of the libraries To make by-laws. aforesaid, shall make, or may authorise any number of the sharers they may think proper, to make all necessary by-laws for the government of the said corporations, subject to alteration at their general meetings, and to appoint or remove from office, in case of misconduct, their secretaries, treasurers and librarians, which said officers shall take an oath or affirmation, faithfully and impartially to do their duties.

Sec. 7. The directors shall have power to make any contract for the use of the respective corporations, so as not to exceed the funds thereof. And contract.

Sec. 8. The sharers of the Lexington library, the sharers of the Danville library, or Georgetown library, (as the case may be) May sue and be sued. (as the case may be) may sue or be sued, and shall have full power to recover all and any sums of money now due by any shareholder, under the articles of subscriptions to the said libraries, or which may hereafter become due to the said corporations, in the same manner as debts of the like amount are by law recoverable.

Sec. 9. Three of the directors (for either library) shall be a quorum to proceed to business, and a majority of whom, shall determine any question. Three directors to be a quorum.

Sec. 10. There shall not be more than two hundred shareholders in the said corporations: the shares shall be transferable; and all estates, rights, properties, privileges, debts and funds, of every kind, now belonging to the said library associations, shall be vested in, and belong to the said corporations. Limitation of shares.

Sec. 11. The said corporations shall and may lawfully possess property, whether real or personal, to any amount not exceeding four thousand dollars, exclusive of its books. And stock.

Sec. 12. The secretaries respectively, shall keep a record of all orders, resolutions and proceedings of the said corporations, which shall be received as evidence, both for and against the respective corporations, in any proceedings. Secretaries to keep a record of proceedings.

1800. matter of controversy, wherein the corporations may be concerned.
- Forfeitures. Sec. 13. There shall be no forfeitures to a greater amount than the value of the share or shares of the delinquents.
- To commence. This act shall commence and be in force from the passage thereof.

CHAPTER CCLXXIV.

An ACT appointing an additional number of Trustees to the Jefferson Seminary.

Approved December 4, 1800.

Be it enacted by the general assembly, That the following named persons, to wit: Abraham Hite, James F. Moore, John Speed, Samuel Oldham, Robert Breckenridge, Gabriel J. Johnston, Fortunatus Cosby, and Abner Field, shall be, and they are hereby appointed trustees of the Jefferson seminary of learning, in addition to those heretofore appointed. And the said trustees, so by this act appointed, shall in all respects, possess and exercise the like power and authority with which other trustees of seminaries in this state, are vested.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXIV.

An ACT to amend and explain an act entitled "an act for the division of Christian County."

Approved December 4, 1800.

WHEREAS it is represented to the present general assembly, that the act passed in December, 1798, for the division of Christian county is imperfect, and wants amending:

Be it therefore enacted by the general assembly, that so much of the act as calls for running the county line from six miles below Benjamin Hardin's, to strike Pond river two miles below Joel downing's, be, and the same is hereby repealed; and the line shall run from said six mile tree to Job Downing's, on Pond river, so as to include said Downing's dwelling house, in Muhlenburg.

This act shall commence and be in force from and after its passage.

IX. YEAR OF THE COMMONWEALTH.

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CHAPTER CCLXXV.

1800.

An ACT authorising the Register to return a Platt and Certificate of survey, to the locator and managers of the Franklin Seminary Lands.

Approved December 4, 1800.

WHEREAS it is represented to the general assembly, that in pursuance to an act granting lands to certain seminaries of learning within this commonwealth, plats and certificates of surveys were returned to the register's office, for six thousand acres of land, located for the benefit of the Franklin seminary; four hundred acres of which, has been discovered to have been previously located:

Be it therefore enacted by the general assembly, That the register of the land-office be, and he is hereby directed to return to the locator and managers on the part of the said seminary, the platt and certificate for the above four hundred acres, which has been erroneously located.

This act shall be in force from its passage.

CHAPTER CCLXXVI.

An ACT repealing in part, an act concerning the owners of Salt and Salt-Petre Works.

Approved December 4, 1800.

Vide Chap. 16, of this Vol. and the Notes.

Be it enacted by the general assembly, That so much of an act entitled "an act concerning the owners of salt and salt-petre works," as relates to the owners or occupiers of the salt-lick near the Ohio, in the county of Mason, be, and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXVII.

An ACT for appointing Trustees in the Town of Jefferson, in the County of Jefferson.

Approved December 11, 1800.

WHEREAS it is represented to the present general assembly, that the inhabitants of the town of Jefferson, in the county of Jefferson, labor under many inconveniences for the want of trustees: therefore,

1800.

Be it enacted by the general assembly, That John Murphy, William Shannon, Philip Tilhart, Robert M. Cowen, Adam Hoke, James Denny and John Stuckley, shall be appointed trustees in and for the said town of Jefferson, and shall be regulated and governed by the rules and regulations prescribed by an act entitled "an act concerning the establishing of towns," passed in the year one thousand seven hundred and ninety-six.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXVIII.

An ACT to amend the act entitled "an act to reduce into one, the several acts for the better regulating certain Officers' Fees."

Approved December 11, 1800.

Clause authorizing clerks to receive money from the treasury for deeds, repealed.

SECTION 1. *BE it enacted by the general assembly, That so much of the act which passed on the 22d day of December, 1798, entitled "an act to reduce into one, the several acts for the better regulating and collecting certain officers' fees," as enables the clerks of the several courts within this commonwealth, or any of them, to receive any monies from the treasury for transmitting and recording lists or memorandums of conveyances of land, which shall have been recorded subsequent to the 22d March, 1799, be, and the same is hereby repealed; and the fees allowed the said clerks for transmitting and recording said lists, shall be charged to and collected from the persons to whom the said conveyances are made.*

To be paid by the persons to whom the deed is made.

No money to be drawn from the treasury, but by law.

Sec. 2. *And be it further enacted, That no monies shall hereafter be drawn from the public treasury under any pretext whatever, unless the law or laws under which the same may be claimed or demanded, shall expressly direct and order that the same shall be paid out of the public treasury.*

This act shall commence and be in force from its passage.

CHAPTER CCLXXIX.

An ACT for granting relief to Settlers South of Green River.

Approved December 11, 1800.

See the preface to Chap. 220, of Vol. 1.

SECTION 1. *BE it enacted by the general assembly,*

That all monies now due, and which shall hereafter become due, for lands granted by this commonwealth to settlers south of Green river, or their assigns, shall be paid in nine annual instalments; the first instalment whereof, shall be paid on the first day of December, one thousand eight hundred and one, and the remaining instalments to be paid on the first day of December, in every year thereafter, until the whole amount be fully paid, by paying five per cent. per annum, simple interest, from the first day of December, 1800, on the whole, or whatever part of the money may remain unpaid, until the whole shall be paid; and at the several periods when the instalments are by this act directed to be paid into the public treasury, the whole of the interest then due on each instalment, shall also be paid, calculating the interest due thereon, from the said first day of December, 1800, any law or laws to the contrary notwithstanding: *Provided*, that nothing in this act contained, shall be so construed as to prevent any settler, who may have acquired a certificate for lands under the laws granting relief to settlers on the south side of Green river, or his assigns, from making payment for the same agreeably to the mode pointed out by the act entitled "an act allowing settlers south of Green river to pay the money due the state, in equal annual instalments, and for other purposes," or from paying the whole of their instalments, with interest thereon, at any time previous to their becoming due.

1800.

Money due
from Settlers to
be paid in nine
annual instal-
ments.

Instalments
when to be paid,
and how interest
shall be calcula-
ted on the mo-
ney due.

Provided.

Sec. 2. *And be it further enacted*, That the further time of twelve months from the passage of this act, be allowed to all persons or their assigns, who through mistake, have obtained certificates for settlements, the whole or any part of which, may have been formed on military claims, to locate at their option, either the whole quantity of ground for which such certificate was granted, or any part thereof, which may be so lost, on any land on the south side of Green river, not at the time of the said entry of removal being made, legally appropriated or entered for by any other person or body politic or incorporate, or actually settled on and occupied, with two hundred acres including such settlement; an entry for the land, to be made with the surveyor of the county in which the land lies: *Provided however*, that any such person shall make it appear that he has so settled himself on mi-

Further time
given to remove
certificates.

Provided.

1800.



litary or other claims; and shall moreover produce a certificate from such court to the surveyor of the county, to the above effect; and shall file in his office, a relinquishment of the land from which the claim is removed, or a certified copy of such relinquishment, signed by the surveyor of the county where the same shall be made, before such surveyor shall admit an entry for lands thus claimed: *Provided*, that no claim thus removed, shall include any salt lick or spring; but such claim so removed, shall be subject to the same restrictions, rules and regulations, as have been heretofore prescribed and made by the act entitled "an act granting relief to settlers south of Green river."

Further time
allowed to en-
ter, survey and
return plats &
certificates.

Sec. 3. *And be it further enacted*, That the further time of two years, from the end of the present session of the general assembly, is hereby allowed to all persons who have obtained certificates for settlement on the south side of Green river, or their assigns, to enter and survey the same, and return the plats and certificates of survey thereof, to the register's office.

In what cases
certificates to
be held.

Sec. 4. *And be it further enacted*, That where any person may have obtained a certificate for a less quantity than one hundred acres, on account of said settlement being so bounded by other and earlier claims as not to admit of a larger quantity; or where any person has removed or shall hereafter remove his claim off a military or other better claim, to a place where he may not be able, on account of the contiguity of other prior claims, to procure one hundred acres, such person shall be entitled to such smaller quantity, any law to the contrary notwithstanding, under the same rules and regulations which are prescribed for other settlers.

Recital.

Sec. 5. And whereas doubts have arisen whether the register is authorised to issue grants for lands south of Green river, to persons who have appropriated the same by means of the legal removal of a claim or claims from ground for which they had previously obtained a grant or grants: therefore,

Register to if-
sue grants on
plats and cer-
tificates of
claims removed

Be it enacted by the general assembly, That the register shall issue grants upon the plats and certificates of survey of such lands, on receiving from the surveyor of the county, where the same may be, a certificate that the relinquishment of the claimant to the land removed from, or a certified copy thereof, is filed in his office;

and the register shall note such relinquishment in the margin of his record book, opposite to the record of the grant, the whole or part of which, shall have been relinquished. Nothing in this act shall be so construed as to authorise the register to issue a grant to any settler or his assigns, until the whole of the state price of the land for which such grant is required, shall have been paid. 1800.

This act shall commence and be in force from and after the passage thereof. Proviso as to the construction of this act.

CHAPTER CCLXXX.

An ACT establishing certain Inspections.

Approved December 13, 1800.

See the prelection to Chap. 53, Vol. I.

BE it enacted by the general assembly, That inspections of flour, hemp and tobacco shall be established at the following places, that is to say : in the county of Breckenridge, on the lands of Joseph Huston, at the mouth of Clover creek, to be called and known by the name of Huston's ; in the county of Muhlenberg, in the town of Louisburg, on the lands of Lewis Kincheloe, to be called and known by the name of Louisburg ; in the county aforesaid, on the lands of Leonard Storm, on Green river, to be called and known by the name of Storm's ; in the county of Madison, on the Kentucky river, below the mouth of Four Miles creek, on the lands of Robert Clark, senior, at a cabin standing on the bank of said river, above said Clark's ferry, to be called and known by the name of Warwick ; in the county of Washington, on the lands of John Dowdal, on Chaplin's fork, to be called and known by the name of Dowdal's ; also of tobacco, flour and hemp, on the lands of Joshua Ferguson, at Ferguson's mill, on the Beech fork, in the said county of Washington, to be called and known by the name of Ferguson's : in the county aforesaid, on the lands of Joseph Ray, at or near the mouth of Panther's creek, on the Rolling fork, to be called and known by the name of Rolling fork ; in the county of Boone, at Rock landing, near the mouth of Big Bone creek, on the lands of Thomas Carneal, to be called and known by the name of Big Bone ; also of tobacco, flour and hemp, on the

Certain inspections established

Huston's.

Louisburg.

Storm's.

Warwick, in Madison.

Dowdal's.

Ferguson's

Rolling fork.

Big Bone

1800. Ohio, in Woolper's bottom, on the lands of Philemon
 Woolper's, Thomas, in said county of Boone, to be called and known
 by the name of Woolper's; in the county of Ohio, in the
 town of Hartford, at such place as a majority of the jus-
 tices of the peace for said county may agree and fix up-
 on, to be called and known by the name of Barnett's;
 Barnett's, in the county of Jefferson, of flour and hemp, at the town
 of Louisville, on the lands of such person as the county
 Louisville, court of said county may contract with, to be called and
 known by the name of Louisville; of tobacco, in the
 county of Mason, in the town of Maysville, on a lot the
 Limestone, property of James Edwards, to be called and known by
 the name of Limestone; in the county of Nelson, on the
 lands of William Kindall, near Scott's ferry, on the
 Beech fork, to be called and known by the name of Po-
 Pocahuntas, cahuntas; in the county of Pulaski, on the lands of Tho-
 mas Cowen, on Cumberland river, to be called and
 Campbell and known by the name of Campbell and Stapp; of tobacco,
 Stapp's, flour and hemp, in the county of Henry, on the lands of
 Hite and Hogg, at the mouth of Drennon's creek, to be
 Drennon's called and known by the name of Drennon's creek; un-
 der the same rules and regulations as other inspections
 creek, of the like kind are in this state.
 To commence. This act shall commence and be in force from and af-
 ter the passage thereof.

CHAPTER CCLXXXI.

An ACT for dividing certain Counties in this State into Election Precincts.

Approved December 15th, 1800.

Bourbon and SECTION 1. *Be it enacted by the general assembly,*
 Nicholas divi- That the county of Bourbon, including that part of the
 ded into elec- county of Nicholas which was taken from the county of
 tion precincts. Bourbon, by an act passed at the last session of the ge-
 neral assembly, entitled "an act for forming a new
 county out of the counties of Bourbon and Mason,"
 Bourbon Pre- shall be divided into two election precincts; and all that
 cinct, part now Bourbon county, shall compose one precinct,
 to be known by the name of the Bourbon precinct.
 Licking pre- And that part of the county of Nicholas, taken from the
 cinct. county of Bourbon by the above recited act, shall com-
 pose one other precinct, to be known by the name of the
 Licking precinct.

Sec. 2. *And be it further enacted,* That all persons 1800,
entitled to vote for a senator and representatives, living ^{Where electors}
in the bounds of the Bourbon precinct, shall hereafter, at ^{shall vote in the}
the time appointed by the law for choosing senators and Bourbon pre-
representatives to the general assembly, meet at the court- cinct.
house in the said county of Bourbon; and those in the ^{In the Licking}
Licking precinct, at the house now occupied by William precinct.
Mitchell. The sheriff of the county of Bourbon shall
hold the election in the Bourbon precinct, and the justi- ^{How and by}
ces of the county court shall appoint judges and a clerk, ^{whom the elec-}
agreeable to the directions of the act entitled "an act re- ^{tion is to be}
gulating elections;" and the sheriff of the county of Ni- ^{conducted in}
cholas, shall hold the election in the Licking precinct, and ^{the Bourbon}
the justices of the county court of Nicholas shall in like ^{precinct.}
manner appoint judges and a clerk for the said precinct. ^{In the Licking}
precinct.

Sec. 3. *And be it further enacted,* That the county of ^{Mason county,}
Mason, together with that part of Nicholas county for- ^{divided into 4}
merly a part of Mason, shall be divided into four elec- ^{election pre-}
tion precincts, as follows, viz: that part of Nicholas ^{cincts.}
county north of Licking, shall compose one precinct, to ^{Nicholas pre-}
be called the Nicholas precinct; and all that part of the ^{cinct.}
county of Mason, lying between Big Sandy and Killika-
nick, shall compose another precinct, to be called the
Sandy precinct; and that part of said county included ^{Sandy.}
between Killikanick, the Ohio, and the Fleming county
line, and bounded on the west by a straight line run from
the corner of Fleming county on the north fork of Lick-
ing to the forks of Cabin creek, and down the same to ^{Ohio.}
the Ohio, shall compose another precinct, to be called the
Ohio precinct; and all the residue of the said county of
Mason shall compose another precinct, to be called the
Washington precinct. ^{Washington.}
The election for the Nicholas
precinct shall be held at the house now occupied by James
Buchanan; the election for the Washington precinct,
shall be held at the court-house in the said county of Ma-
son; and the county court of said county shall, at their
June term preceding the next general election, fix upon
convenient places in each of the other precincts, for the
elections, and appoint judges and clerks to superintend
the elections in the respective precincts. ^{Elections where}
The sheriff of ^{held.}
the said county shall, by himself and his deputies, hold
the said elections in each precinct. The sheriffs, and
also the judges and clerks to be appointed agreeably to
this act, shall, in every respect relative to holding said

^{By whom to be}
conducted.

1800. elections, be governed by the above recited act regulating elections. The sheriffs for the counties of Bourbon and Nicholas, shall meet at the court-house in the county of Bourbon, on the fourth day from the commencement of the election; and those holding the elections in the respective precincts in the county of Mason, shall meet at the court-house in said county, on the fifth day from the commencement of the elections; and having ascertained by faithful addition and comparison, the persons duly elected, shall certify and make return thereof, agreeably to the directions of the above recited act.

Sheriffs for
Bourbon & Ni-
cholas, when &
where to meet.

For Mason.

Knox and Floyd
declared to be
election pre-
cincts.

Sec. 4. *And be it further enacted*, That the counties of Knox and Floyd, shall be, and the same are hereby declared election precincts, for the purpose of choosing representatives, and all other officers, who, by the laws and constitution of this commonwealth, are directed to be chosen by the people; and the qualified electors for the said counties of Knox and Floyd, shall meet at the court-houses of their respective counties, or places fixed on for holding courts therein, for the purpose of electing all officers whose elections are made by the people. And that the sheriffs of the said counties of Knox and Floyd shall be governed, in all respects, by the act of assembly entitled "an act for regulating elections," as in other cases of elections. And the sheriff of the county of Lincoln and the county of Knox, shall meet at the court-house in the county of Lincoln; and the sheriffs of the county of Floyd and the county of Fleming, shall meet at the court-house in the county of Fleming, on the seventh day after the commencement of the elections, and having ascertained by faithful addition and comparison, the persons duly elected, shall certify and make return thereof agreeably to the directions of the above recited act regulating elections.

Sec. 5. And no person shall be entitled to vote in any other precinct than that in which he actually resides at the time of the election. The judges and clerks to be appointed agreeably to this act, shall severally be entitled to receive the same allowance as is directed by the above recited act regulating elections, to be paid out of the county levy of the county in which the service shall be rendered; and the county court of the counties in which the sheriffs shall severally reside, shall make to them such allowance as they may think reasonable, for

Electors to vote
in their own
precincts only.
Allowance to
judges & clerks

And to sheriffs.

IX. YEAR OF THE COMMONWEALTH.

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travelling and attending to compare the polls, to be paid out of the county levy. 1800.

This act shall be in force from its passage.

To commence,

CHAPTER CCLXXXII.

An ACT supplementary to an act to amend an act entitled "an act to reduce into one the several acts concerning Wills, the distribution of Intestates' Estates, and the duty of Executors and administrators."

Approved December 15, 1800.

BE it enacted by the general assembly, That any person of the age of eighteen years, being possessed of, or having a right to any slave or slaves, may by his or her last will and testament, or by an instrument of writing, emancipate such slave or slaves. So much of the act entitled "an act to amend an act entitled an act to reduce into one the several acts concerning wills, the distribution of intestates' estates, and the duty of executors and administrators," as comes within the purview of this act, shall be, and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXXIII.

An ACT authorising the Inhabitants of the Town of Springfield to elect Trustees from among themselves.

Approved December 15, 1800.

WHEREAS it is represented to the present general assembly, that the inhabitants of the town of Springfield labor under great inconveniences by reason of the trustees of said town not being inhabitants of the same: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly, That* the inhabitants of said town are hereby authorised and required to meet at the court-house of the said county, on the first Monday in January next, and on the same day in every year thereafter; and then and there elect five trustees, who shall reside in the said town; which said trustees, so elected, (a majority of whom shall be sufficient to form a board) shall be authorised to make any by-laws for their government as to them shall seem

Preamble.

Inhabitants of Springfield elect trustees.

Who may make by-laws.

1800. right, not inconsistent with the constitution and laws of this state; and also to levy and collect any sum of money or property not exceeding ten pounds annually, that may seem right, for the purpose of clearing obstructions and filth out of the streets, and also for clearing out the spring and keeping the same in repair; and also the said trustees are fully authorised and required to make deeds of conveyance and re-conveyance to all and any of the lots in the said town upon sales made by former trustees, or the proprietors, or any other person.

And levy an annual tax for certain purposes.
To make deeds
General provision.
Sec. 2. *And be it further enacted*, That in all cases, except as to the powers expressly given to the said trustees by this act, they and the inhabitants of the said town, shall be governed by the act entitled "an act concerning the establishing of towns," passed in the year 1796.

To commence. This act shall commence and be in force from the passage thereof.

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CHAPTER CCLXXXIV.

An ACT to vest certain Lands in Trustees for the purpose of an Academy in the County of Franklin.

Approved December 17, 1800.

Preamble.

WHEREAS it is provided by the third section of the act entitled "an act to establish and endow certain academies," passed the 22d day of December, 1798, that the several county courts for the several counties in this commonwealth, in which seminaries have not been established by this or any former act, shall be, and are hereby authorised to have located, surveyed and patented, within the bounds herein before prescribed, six thousand acres of any waste and unappropriated land, for the use of such schools as may hereafter be established within either of the said counties, under the like rules and regulations as trustees are by this act governed: And whereas no seminary was then established in the county of Franklin; and whereas the county court of the said county have caused to be located and surveyed, six thousand acres of land, by virtue of the said act, the expenses attendant thereon, having been undertaken to be defrayed by the voluntary contribution of a few citizens in the said county; and whereas it will greatly promote and facilitate the benevolent purposes of the said

act, that the said land should be vested in a corporation for the endowment of a seminary of learning: 1800.

Sec. 1. *Be it therefore enacted by the general assembly,* That Bennett Pemberton, Thomas Todd, William Murry, George Madison, Baker Ewing, Otho Beatty, Isaac E. Gano, James Blair, Daniel Weisiger, William Trigg, John M. Scott, Anthony Crockett, Thomas Tunstall, John Logan, Isham Talbot, Joseph H. Daveiss and William Hunter, and their successors, to be appointed as herein after directed, shall be a body politic and corporate, by the name, style and designation of "The Trustees of the Kentucky Seminary;" and by that name shall have perpetual succession, and may sue and be sued, implead or be impleaded, either at law or in equity, and may establish, have and use a common seal, with such device or devices as they may judge proper; and from time to time, may deface or destroy the same, and another or others in the place thereof, substitute and put; they shall be capable to take, have, hold and enjoy, for the purpose of this act, any goods and chattels, or lands, tenements, hereditaments, or any estate therein or thereout, accruing by gift, grant or devise.

Trustees appointed.

And incorporated.

Name.

May sue or be sued, &c.

May have a common seal.

May have, hold and enjoy property.

Sec. 2. *And be it further enacted,* That the six thousand acres of land located, surveyed and returned to the register's office, for the county court of Franklin, except so much thereof, as may be authorised by an act this session of the general assembly to be withdrawn, shall be, and the same is hereby vested in the said trustees and their successors, forever, for the endowment of the said seminary. That the said trustees shall also be authorised and empowered to cause to be located, surveyed and patented, in the name of the said corporation, and for the same purposes, a quantity of land equal to that which may be withdrawn as aforesaid, within the bounds, and under the restrictions in the said act of December 22d, 1798, described and enumerated.

6000 acres of land vested in them.

Sec. 3. *And be it further enacted,* That when the seat of any of the said trustees or their successors, shall have been vacated by death, resignation or dismissal, it shall be lawful for the remaining trustees to proceed to fill up such vacancy; provided that they shall make no appointment to fill such vacancy, except at a stated meeting, of which, and the business then to be transacted, public notice shall be given in some newspaper. If any

Vacancies how filled.

1800. of the said trustees or their successors, shall fail to attend at three successive stated meetings, and no reasonable excuse be offered therefor, at either of the said stated meetings, he shall be deemed to have demitted from his seat.

Nonattendance
for three stated
meetings va-
cates a seat.

Trustees may
make by-laws. Sec. 4. The said trustees or their successors, shall have power to make by-laws, not inconsistent with this act, or the laws of this commonwealth, for their own government, and that of the said seminary; and to appoint in the same, a provost or president, professor or professors, masters or teachers, in any branch or branches of the arts or sciences, from time to time, as they may judge most conducive to the promotion of its objects.

And appoint
officers.

To fix on the
permanent seat
for the seminary. Sec. 5. The said trustees and their successors, shall have power to fix upon a temporary and permanent seat for the said seminary, and to apply any money or other chattels personal, not being instruments, books or apparatus, necessary and belonging to the said seminary, in such buildings and improvements upon land belonging thereto, and to such other purposes, beneficial to the said institution, as they may deem proper.

And erect build-
ings.

Shall not have
power to alien-
ate certain pro-
perty. Sec. 6. They shall have no power to alienate any instruments, books or apparatus, as above described, or any lands, tenements or hereditaments, or make any grant or demise thereof, for a longer term than seven years; nor shall any such grant or demise, or authority to make the same, be made, given or granted, unless two-thirds, at the least, of the said trustees for the time being, shall be present.

Nor grant lands
for a longer term
than 7 years.

Two-thirds
must be present
to make a grant

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXXV.

An ACT to amend an act entitled "an act to reduce into one the several acts or parts of acts concerning Sheriffs."

Approved December 18, 1800.

See prælection to Chap. 16, Vol. I.

WHEREAS the act entitled "an act to reduce into one the several acts or parts of acts concerning sheriffs," which passed the nineteenth of December, 1796, compels the sheriffs of the several counties to settle up and

account for all fees put into their hands by clerks and surveyors, by the last day of May in each year ; and the time being considered too short : therefore,

1800.

Be it enacted by the general assembly, That the sheriffs in each county shall collect all fees which may be put into their hands by clerks or county surveyors, on or before the first day of March ; and shall account for the same on the first day of September following. And so much of the said recited act as compels sheriffs to settle up with the clerks and surveyors on the last day of May, is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXXVI.

An ACT to provide for the payment of the Postage on public communications made to the Executive of this state.

Approved December 18, 1800.

BE it enacted by the general assembly, That whenever letters by post shall be directed to the governor of this commonwealth, and contain certain business which shall relate thereto, and upon which postage shall not be paid, the governor shall, and he is hereby authorised to draw on the auditor of public accounts for a warrant for the amount thereof, which shall be paid out of the public treasury.

This act shall be in force from the passage thereof.

CHAPTER CCLXXXVII.

An Act establishing an Inspection of Flour, Hemp and Tobacco, on the lands of James Currens and Robert Kirk, in the County of Livingston.

Approved December 18, 1800.

BE it enacted by the general assembly, That an inspection of flour, hemp and tobacco, be established in the county of Livingston, on the lands of James Curren, at the forks of Harrican, to be called and known by the name of Curren's. Also an inspection of flour, hemp and tobacco, on the mill branch of Harrican, on the west side, in the county aforesaid, on the land of

1800. Robert Kirk, and to be called and known by the name of Kirkfield; under the like rules and regulations as is provided by law in respect to other inspections of the like kind in this commonwealth.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXXVIII.

An ACT for the erection of a new County out of the Counties of Pulaski and Cumberland.

Approved December 18, 1800.

Boundaries. SECTION 1. *Be it enacted by the general assembly,* That from and after the first day of March next, all that part of the counties of Pulaski and Cumberland, included within the following bounds, that is to say—beginning at the mouth of Indian creek, on the Cumberland river, and running up the same by Sanduskie's cabin, to the road that leads from Capt. Thomas Johnston's to Major Alexander M'Farland's, on Indian creek; thence to the top of the Poplar mountain; thence with the same until it intersects the state line; thence east with said line so far that a north line will strike the mouth of Rock creek, on the main south fork of Cumberland river; thence down the same to main Cumberland river; thence down the same to the beginning, shall be one distinct county, and called and known by the name of WAYNE.

Courts when held. SEC. 2. After the said division shall take place, the courts of the said county of Wayne shall be held on the third Monday in every month; and the courts of quarter sessions for the said county shall be held in the months of May, August, October and December, in every year, in such manner as is provided by law in respect to other counties within this commonwealth.

Justices where to meet. SEC. 3. The justices to be named in the commission of the peace for the said county of Wayne, shall meet at the house of Henry Garner, in the said county, on the first court day after the said division shall take place, and having taken the oath prescribed by law, and a sheriff being duly qualified, the court shall proceed to appoint and qualify their clerk, and fix upon a place for the seat of justice for the said county, and proceed to erect the public buildings at such place; *Provided always,*

To take oath.
Fix on a place for seat of justice and appoint a clerk.

Provido.

that the place for the permanent seat of justice shall not be fixed, nor a clerk be appointed (except *pro tempore*,) unless a majority of the justices of the court for which the clerk is to be appointed, concur ; but shall be postponed until such majority can be had.

1800.

Sec. 4. It shall be lawful for the sheriff of Pulaski and Cumberland to make distress for any public dues, or officers' fees unpaid by the inhabitants within the bounds of Wayne at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been passed.

Sheriffs may
make distress.

Sec. 5. The courts of the said counties of Pulaski and Cumberland, shall have jurisdiction in all actions and suits depending therein at the time of such division, and shall try and determine the same, issue process and award execution thereon.

Pulaski and
Cumberland
courts to retain
jurisdiction.

Sec. 6. *And be it further enacted*, That the inhabitants of the said county of Wayne, shall proceed to vote for and choose a representative at the court-house of Pulaski county, until they shall be entitled to a separate representation agreeably to the ratio heretofore fixed by law, any custom or usage to the contrary notwithstanding.

Electors where
to vote.

This act shall commence and be in force from and after the first day of March next.

To commence.

CHAPTER CCLXXXIX.

An ACT to revise and reduce into one, the several acts concerning the Town of Washington, in the County of Mason.

Approved December 18, 1806.

SECTION 1. *BE it enacted by the general assembly*, That the land comprehending the town of Washington, in the county of Mason, as established by an act of the assembly of Virginia, passed the 12th day of November, 1790, shall be, and the same is hereby vested in Edward Harris, sen. John Johnston, Benjamin Bayles, David Davis, Daniel Vertner, William Heddleston, Samuel Baldwin, Stephen Treacle and Lewis Moore, trustees, and their successors in office. On the first Saturday in April next, and on the first Saturday in every year thereafter, all free male persons above the age of twenty-one years, being freeholders of, or house-keepers in

Lands vested in
trustees.Elections when
to be held.

1800.	the said town, are hereby authorised to elect and choose,
Qualifications of a trustee.	annually, nine trustees, for the purposes hereafter mentioned ; but no person shall be capable of being elected a trustee who is not a freeholder and an inhabitant of the said town.
Elections where held and under whose direction	Sec. 2. The elections for said trustees shall be held at the court-house in the said town, under the superintendence of the presiding trustee for the time being, or in case of his absence or inability, by another member appointed by the board, who shall give ten days previous notice of the election, by advertisement in the most public places in the said town ; and the persons elected shall be by the clerk of the board entered on the book of record by him kept ; and if the person appointed to superintend the annual election, shall fail or neglect the duties hereby imposed on him, he shall forfeit and pay a fine of twenty dollars for each failure, to be recovered by warrant, before any justice of the peace, and together with other fines and penalties arising under this act, to be applied to increase the funds of the said town. Vacancies taking place between the annual elections shall be filled by the remaining trustees. The said trustees and their successors, or a majority of them, shall have power to impose taxes, not exceeding two hundred dollars annually, on the real property within the said town, to be applied to such purposes as they, or a majority of them, may think proper, for the improvement of the said town and the general convenience of its inhabitants ; they shall make regulations for the assessment, collection, accounting for the taxes hereby imposed ; appoint a clerk to the board, who shall continue in office during good behaviour, to be adjudged of by the trustees ; they shall have power to settle and determine the limits of lots in said town, and lay off the surplus land within the bounds of the out-lots into alleys, as to them may seem best, for the convenience of the owners of out-lots, for more easy access to them ; they shall have power to appoint overseers of the streets and roads within the limits of the said town, and allot the hands ; and the inhabitants thereof, may be compelled to work on any road leading therefrom, as far as one mile from said court-house ; the said trustees are hereby authorised to make by-laws not contrary to the laws and constitution of this state or of the United States, as shall by a majority of
To be advertised.	
Names of trustees to be recorded.	
Penalty for failing to superintend elections.	
How recovered and applied.	
Vacancies how filled.	
Trustees may impose taxes &c.	
How collected.	
Trustees to appoint a clerk.	
To settle the limits of the lots, &c.	
To appoint overseers, &c.	
Inhabitants to work on roads.	
Trustees to make by-laws.	

them, be thought necessary for the regulation of the said town, or for carrying the same into complete effect.

1800.

Sec. 3. The said trustees and their clerk, shall, before they proceed to business, take an oath to discharge the duties of their respective offices, without favor, affection or partiality, the oath to be administered by the presiding trustee to the clerk, and by him to the members of the board; and the clerk shall have power to administer oaths to any person or persons coming before the board, under the directions of this act. All deeds to lots in the said town made by William Woods and Arthur Fox, or either of them, are hereby declared valid; and a majority of the trustees for the time being, are authorised and required to make deeds for the lots in the said town, for which deeds have not been made, to any person producing a receipt for the purchase money from the said Wood and Fox, or the said William Wood, surviving partner; which deeds shall be good and valid in law.

To take an oath.

Clerk may administer oaths.

Certain deeds declared valid.

Trustees may make deeds in certain cases.

Sec. 4. Immediately after every annual election of the trustees directed by this act, the powers of their predecessors shall cease, and the trustees so elected, shall be put in possession of the property, papers and records, which their predecessors were in possession of; and in case they fail to deliver them up, they may be proceeded against by motion, on ten days notice, before the county court of Mason, who shall give judgment according to the nature of the case: and if no election shall be held at any one annual period, the trustees for the time being, shall continue in office with full powers, until the next annual election.

The power of the former trustees when to cease.

Trustees elected, to have books, papers, &c.

How they may be recovered.

Provision in case no election is held.

And whereas it is represented that the trustees of the said town were not chosen by the inhabitants thereof at the last annual election, as heretofore directed by law; and to prevent inconvenience to the said town, and the inhabitants thereof, the trustees in office for the last year, have, in some instances, exercised the duties of trustees:

Recital.

Sec. 5. *Be it therefore enacted*, That all acts done by the late trustees, which would have been lawful if they had been re-elected by the electors of the said town, shall be, and they are hereby confirmed; and the right of the trustees of the said town, as originally invested, shall not be impaired by this lapse.

Acts of the late trustees confirmed.

1800. *Sec. 6. Provided, and be it further enacted, That no-*
thing herein contained, shall in any wise affect, alter and
impair the right of William Ward, Simon Kenton and
John Tibbs, or either of them, their heirs and legal re-
presentatives, to the land hereby vested as aforesaid ;
nor shall the power of the said trustees extend to, or in
any manner affect those parts of the said town claimed
by the persons, or any of them, above named, or their
or either of their heirs and legal representatives : Pro-
vided also, that all the right and claim, in both law and
equity, of all and every other person and persons, to all
and any other part or parts of the said town, shall be,
and the same is hereby saved, so far as to enable any
such person or persons, upon establishing his, her or
their claim to all or any part of the said town, to recover
of and from the said William Woods and Arthur Fox,
their, and each of their heirs and legal representatives,
the sum or sums of money, or value of the property for
which such part or parts of the said town lands sold,
with lawful interest for the same from the time of sale,
until the same shall be recovered. All acts or parts of
acts coming within the purview of this act, shall be, and
the same are hereby repealed.

This act shall commence and be in force from the pas-
sage thereof,

Rights of cer-
tain persons la-
ved.

Provido,

Certain acts re-
pealed.

To commence.

CHAPTER CCXC.

*An ACT compelling persons holding Offices, to resign be-
fore they become Candidates for Offices incompatible
therewith.*

Approved December 18, 1800.

Be it enacted by the general assembly, That no person
holding an office under the government of this state, or
of the United States, which is incompatible with a seat
in the legislature of this state, shall be voted for as a
member to either branch of the legislature, until such
person shall have resigned his said office, nor before a
copy of his resignation shall be filed with the clerk of the
court to which he may belong, or the court of the coun-
ty in which he resides ; and all votes given in favor of
such person before his resignation, shall be utterly void,
any law to the contrary notwithstanding.

This act shall be in force from its passage.

CHAPTER CCXCI.

1800.

An ACT amending the several acts concerning the Town of Danville.

Approved December 18, 1800.

WHEREAS the several laws passed concerning the trustees of the town of Danville, have proved ineffectual, and it is necessary there should be some certain regulation of the said town : therefore,

Preamble.

Sec. 1. *Be it enacted by the general assembly,* That the trustees of the town of Danville, who were in office before the expiration of the time for which they were elected, shall continue in office, and they are hereby declared to be the trustees of said town, until the next election, directed by law to be held on the first Monday in September, 1802, for trustees for said town.

Trustees to be continued until Sept. 1802.

Sec. 2. *And be it further enacted,* That the by-laws made by the said trustees, on the fourteenth day of December last, declaring what property should be liable to taxation, and the manner in which such property should be ascertained and taxed, together with all proceedings which were had under the said by-laws, are hereby declared to be as legal as if said by-laws had been advertised ; and the collector appointed by such trustees, is hereby authorised and required to proceed to collect and pay into the hands of such person as the said trustees may appoint for that purpose, all monies due by the tax laid agreeable to the by-laws aforesaid, as soon as may be. And he is hereby authorised to make distress and sale for the same, in case of refusal to pay.

By-laws confirmed.

Collectors to proceed to their collection.

May make distress.

Sec. 3. *And be it further enacted,* That if any vacancy should happen, by death, resignation or removal, in the board of trustees for said town, between the general elections for trustees for said town, directed by law to be held, the remaining trustees of the said town, or a majority of them, meet as soon as convenience will admit, and appoint some fit person to fill such vacancy, who shall continue in office till the next election for trustees takes place.

Vacancies how supplied.

Sec. 4. *And be it further enacted,* That if the clerk of the board of trustees of said town, should fail to advertise and hold elections in the manner directed by law, he shall be liable to pay five dollars for such neglect, to be recovered by the trustees, or deducted out of

Penalty on clerk failing to advertise.

1800. his allowance, and applied to the use of said town. And if the clerk should fail to hold such election, the trustees then in office, shall continue until others are legally elected.

Board may meet at any time, if necessary. Sec. 5. *And be it further enacted,* That the board of trustees for said town may, at any time they shall deem it necessary, appoint some fit person residing in said town, as a commissioner, for the purpose of procuring lists of all such property as they may determine fit subjects of taxation, under the act of assembly directing the same; that the said commissioner, before he begins to exercise the duties of his office, shall make oath before some justice of the peace, "that he will faithfully execute the office of commissioner agreeable to law, and according to the best of his abilities, without partiality."

Commissioner to be appointed He shall then, without delay, proceed to call on each person residing in the limits of said town, or holding lots therein, or his or her agent, if any such there be, for a written list of his or her property, which being distinctly read over by the commissioner to the person delivering the same, he or she shall make oath or affirmation, which the commissioner is hereby authorised to administer, to the truth of such list; and the said commissioner shall adjust the value of the property with the owner thereof, and note the amount of such valuation on such list; and in case of neglect or refusal on the part of the person so called upon, either to give a list of his or her property as aforesaid, or to adjust the value thereof, with the commissioner, it shall be the duty of the commissioner to make out a list of the property of such delinquent, from the best information he can procure, and to fix the value thereof, himself; which list, with the valuation aforesaid, shall be thereafter in a convenient time, returned by the commissioner aforesaid, to the board of trustees, that they may be enabled thereby to lay and apportion the tax under a former law concerning said town. *Provided however,* That if any person shall think himself or herself aggrieved by such valuation, he or she may appeal to the next board of trustees thereupon, who shall, if they see cause, reduce the estimate or valuation so made by the commissioner. And said commissioner shall be allowed two dollars per day whilst he is employed under this act, to be paid by the trustees out of the monies collected as tax. And if any person liable

And make oath

His duty.

Lift of valuation returned.

Provide;

Commissioner's allowance.

to the payment of tax, shall give or deliver to the commissioner, a false or fraudulent list of persons or property subject to taxation, he or she shall be liable to a fine of forty shillings, to be sued for in the name of, and recovered by the trustees, or a majority of them, in the manner debts of like value are now recoverable by, and to be applied to the use of said town.

1800.

Penalty on giving a false list.

Sec. 6. And when the trustees have laid and apportioned the tax on the citizens of said town, they shall appoint a collector, whose duty it shall be to collect and account for the tax of said town within three months after a list of the same shall be put into his hands by the trustees ; and if any person shall refuse to pay the same, the said collector shall make distress and sale of property, in the same manner the collector of the revenue is directed by law to do. And the said collector shall deliver the money so collected to the trustees, or any person which they may appoint for that purpose, deducting thereout six per cent. for his services in collecting said tax ; or on failure thereof, shall be liable to said trustees in the same manner that collectors of the revenue are liable.

Collector to be appointed.

His duty.

Sec. 7. *And be it further enacted*, That the trustees shall meet every year in the court-house in Danville, on the fourth Saturday in the months of February, May and September, and as much oftener as they may deem necessary, for the internal police of said town ; and for each day the clerk of said trustees may attend, he shall receive the sum of one dollar, and be allowed as much more for contingent services as the said trustees in their discretion may think proper, to be paid by the trustees out of the money collected from the citizens of said town.

Trustees to meet annually in certain months.

Compensation to their clerk.

And so much of every act as comes within the purview of this act, is hereby repealed.

Repealing clause.

This act shall take effect from its passage.

To commence.

CHAPTER CCXCII.

An ACT allowing Aliens to hold Lands in fee simple, in this Commonwealth.

Approved December 18, 1800.

WHEREAS by the laws now in force in this commonwealth, aliens cannot hold lands therein ; and whereas it

1800. is considered the true interest of his state that such prohibitions and distinctions be done away :

Be it therefore enacted by the general assembly, That any alien, other than alien enemies, who shall have actually resided within this commonwealth two years, shall during the continuance of his residence herein after the said period, be enabled to hold, receive and pass, any right, title or interest, to any lands or other estate, known within this commonwealth, in the same manner and under the same regulations, as the citizens of this state may lawfully do.

This act shall commence and be in force from its passage.

CHAPTER CCXCIII.

An ACT to divide Lincoln County into Election Precincts.

Approved December 18, 1800.

Lincoln county
divided into two
election pre-
cincts,

SECTION 1. *Be it enacted by the general assembly,* That the county of Lincoln shall be divided into two election precincts ; and all that part of the county lying west of a line beginning on the Pulaski and Lincoln line, and running at right angles, so as to include Joseph Dismuke's, on the head of Indian creek ; thence a direct line to the mouth of the Pine lick branch ; thence a direct line to Neely's gap ; thence along the ridge dividing the Rolling fork waters and the Green river waters, to the Green county line, shall compose one precinct, to be known by the name of Green river precinct ; and the residue of said county shall compose one other precinct, to be known by the name of Lincoln precinct.

Where and how
to give in votes

Sec. 2. *And be it further enacted,* That all persons entitled to vote for a senator and representative, living in the bounds of the Green river precinct, shall hereafter, at the time appointed by law for choosing senators and representatives to the general assembly, meet at the house now occupied by Amos Hodge ; and those of the Lincoln precinct, at the court-house in the said county of Lincoln ; and the sheriff of the county of Lincoln, shall hold the election in Lincoln precinct ; and the justices of the county court shall appoint judges and clerk, agreeable to the law regulating elections ; and the county court of Lincoln shall, at their June term preceding the next

general election, appoint judges and clerk to superintend the election in the Green river precinct; and shall also appoint a proper person to act as sheriff in the said precinct, who shall be first qualified to act in their respective offices; and no person shall be entitled to vote in any other precinct than that in which he actually resides at the time of holding said elections; the judges and clerks to be appointed agreeable to this act shall severally be entitled to receive the same allowance as in similar cases. The sheriff of the county of Lincoln, and the person appointed to act as sheriff in the Green river precinct, shall meet at the court-house in the county of Lincoln, on the fifth day after the commencement of the elections, and having ascertained by faithful addition and comparison, the persons duly elected, shall certify and make return thereof, agreeable to the act regulating elections.

1800.

This act shall commence and be in force from and after its passage.

CHAPTER CCXCIV.

An ACT to amend the Laws of proceeding in Civil Cases:

Approved December 18, 1800.


See the prelection to Chap. 264, Vol. I.

SECTION 1. *BE it enacted by the general assembly,* That in actions of ejectment, it shall be lawful for the plaintiff to declare in his proper name, as in other actions, against the defendant by his proper name, and instead of the fictitious suggestions of lease, entry and ouster, to state that he is legally entitled to the premises, and aver the ejectment and trespass of the defendant; and the defendant may in his defence plead not guilty, or plead his title according to its truth: the parties having the same right of pleading, joining issue, and demurring, as in other cases. The declaration in ejectment shall be served by delivering a copy thereof, and notice of the day on which the defendant is to appear to defend the suit. The ejectment shall be put on the rule docket as other cases: but the person through whom the possessor of the premises in question claims title, may on motion be admitted defendant as heretofore.

Proceedings in
ejectment.

Sec. 2. *And be it further enacted,* That consent of the parties, certified by their written agreement, or the re-

What shall give
jurisdiction to
courts.

1800.  cord, shall always give jurisdiction to the general court, or other inferior courts having cognizance of similar subjects. No plea in abatement shall be filed on setting aside office judgments, or writs of inquiry; unless the cause of abatement hath arisen since the last continuance of the suit.

Pleas in abatement.

How a *capias* may be executed when no bail is required. Sec. 3. *And be it further enacted*, That in all cases where a *capias* requires no bail, actual arrest of the defendant shall be unnecessary; but reading the writ to the defendant, or delivering him a copy thereof, or if he will not hear the writ, or receive the copy, then throwing down such copy in his presence, shall be a good service of such *capias*: and the sheriff returning that he has pursued either of the above measures, shall be equal to a return of execution; and it shall not be lawful for him to return that he was kept off by force from executing such writ. And in cases in which the writ requires the sheriff to take bail, and the defendant shall use arms or threats to keep off such sheriff, he may in like manner throw down a copy of the writ in his presence, and return a copy left; whereon the plaintiff may order an attachment as in cases of a common return of a copy left.

Where bail is required, but kept off.

Proceedings in case of bills of exceptions. Sec. 4. *And be it further enacted*, That if any inferior court do refuse to sign a bill of exceptions tendered to them, and the same is certified and signed by the bystanders as the law requires, the court shall permit the said bill to be filed and become a part of the record; and if they refuse, the court of appeals may, when such cause is brought before them by writ of error or appeal, upon proper affidavits of such refusal, in their discretion, admit such bill of exceptions as a part of the record. When the court shall certify as cause of their refusal to sign such bill, that its statement is not true, and bystanders shall sign the bill, certifying its truth, affidavits may be taken by either party as to its truth, during the term, or if the cause be tried on the last day thereof, then within five days thereafter, and in either case, shall be deposited with the clerk, and shall be certified with the record; but neither party shall file more than five such affidavits.

Concerning joint tenants, &c.

Sec. 5. *And be it further enacted*, That where land is held by two or more persons in jointenancy or tenancy in common, and one of them lives out of this commonwealth, or is a minor, a person insane or *feme covert*, and

the other a resident thereof, it shall be lawful for such resident to carry on any suit or action for the adjustment of any claim to said land : *Provided however*, that it shall be lawful for such minor, insane person or *feme covert*, within three years after their several disabilities are removed, and of said non-residents within five years after rendering said judgment or decree, to impeach, reverse and vacate the same on the ground of fraud or collusion of such resident, jointenant or tenant in common, in obtaining the same.

1800.

Proviso.

Sec. 6. In suits in chancery, the plaintiff may take depositions within one month after he has filed his bill, if he pleases to do so ; and the defendant may do the like immediately after filing his answer, whether replication be made thereto or not. If the suit is in such state as to allow of taking depositions, it shall be unnecessary for either party to have a *dedimus* for that purpose, unless the witnesses live out of this state ; and no notice shall be necessary of the application for an order to take depositions, if such application be made to the court in term time.

When depositions may be taken.

Dedimus not necessary.

Sec. 7. Orders of survey may be directed by the court to any person they may elect.

Orders of survey.

Sec. 8. In actions for breaking the close, in slander and trespass, assault and battery, the plaintiff shall have full costs if the verdict be for him, although the damages found be less than forty shillings.

Full costs given in certain cases.

Sec. 9. On the dissolution of an injunction, judgment shall be given by the court against the securities as well as the plaintiff, in the injunction bond. And in all bonds hereafter given on appeals and writs of error, where the judgment of the inferior court shall be affirmed in part, or in whole, the judgment shall be given against the securities in said appeal or *supersedeas* bond, as well as against the principal ; and execution shall issue accordingly.

Judgment given against securities in certain cases.

Sec. 10. *And be it further enacted*, That whenever it is necessary to revive a suit in chancery, in which the answer of the defendant deceased, shall have been filed, an order of the court for that purpose, reviving the same in the names of the legal representatives of the deceased, shall be sufficient, without bill of revivor, as heretofore. But where such order is made against the repre-

How suits in chancery may be revived.

Order to be served on the

1800. ^{defendant, and} ^{how.} representatives of the defendant, a copy thereof shall be served on the persons so made defendants by order of revival, if they reside within this commonwealth : And where the defendants do not reside within this commonwealth, that then, in such cases, the said order shall be published in the public papers, as in other cases of absent defendants.

Proceedings in case of an arrest of judgment. Sec. 11. When judgment is arrested, the plaintiff need not bring a new suit, provided his first writ is sufficient ; but the court may order new pleadings to commence, where the errors causing the arrest began. And when a judgment is arrested, the party committing the error shall pay the costs occasioned thereby.

Clerks of Quarter session courts to record their proceedings each day. Sec. 12. Every clerk of a quarter session court shall draw up and record, on the evening of each day, the several orders of his court of that day, and if correct, it shall then be signed by the presiding justice of such court ; but the record of the proceedings of the said courts, on the last day of any term, shall be read and signed as aforesaid, on the first day of the ensuing court. Nothing herein contained shall prevent the minutes of the courts before mentioned, from being read and signed, as heretofore, each day before the adjournment of the court.

CHAPTER CCXCV.

An ACT to explain and amend the Law relative to Writs of Ne Exeat and Injunction.

Approved December 18, 1800.

See the preface to Chap. 273, of Vol. I.

Writs of ne exeat how granted. SECTION 1. *Be it enacted by the general assembly,* That writs of *ne exeat* shall not be granted but upon a bill filed and affidavit made to the truth of the allegations, which being produced to the court in term time, or in vacation to as many judges or justices as shall be necessary to constitute the court to which they severally belong, (except the general court, wherein one judge shall be sufficient, if the general court hath jurisdiction of the case,) they may grant or refuse such writ as to them shall seem just ; and if granted, they shall endorse thereon in what penalty bond and security shall be required of the defendant. And a writ of *ne exeat* may issue in any cause where the court of chancery shall have con-

current jurisdiction with a court of common law ; and they shall also endorse the name or names of the security or securities, and in what sum bond and security shall be required by the complainant. And no writ of *ne exeat* shall issue until such bond, with good security, shall be given by the complainant in the clerk's office from whence the writ is to issue. And in case any person stayed by such writ of *ne exeat*, shall think himself or herself aggrieved, he or she may bring suit on such bond ; and if on the trial it shall appear that the writ of *ne exeat* was prayed without a just cause, the person injured, shall recover the damages sustained by such writ of *ne exeat*.

1800.

Bond and security to be given

Persons aggrieved may bring suit on the bond

Sec. 2. *And be it further enacted*, That if the defendant to the bill shall go out of the state, but shall return before a personal appearance shall be necessary, by any decree of the court, or shall be necessary to perform any order of the court, such his or her temporary departure, shall not be considered a breach of the condition of the bond.

Temporary departure of the defendant out of the state no forfeiture.

Sec. 3. Whenever the defendant to the bill shall give security that he will not depart the state, the security shall have power at any time (before the bond shall be forfeited) to take the body of his principal, and surrender him in open court, or deliver him to the sheriff of the county where the court is held in which the suit is depending, who shall detain said principal as in cases of surrender of the principal by special bail ; and in case he shall deliver him to the sheriff, he shall take his receipt for the body, and file it with the clerk of the court ; either of which, if done before the bond is forfeited, shall discharge the security from his undertaking.

Security may surrender the principal.

Sec. 4. No notice shall be necessary in any case where an application shall be made for an injunction during term time of any court, nor in vacation, in any case where the title or bounds of land are brought in question.

Injunctions, no notice necessary in case of lands.

Sec. 5. *Be it further enacted*, That any judge of the district courts may grant an injunction in any district in the state ; but such injunction shall be tried in the same district as it would have been if this provision had not been made.

To be granted by any judge of the district court.

This act shall commence and be in force from and after the passage thereof.

To commence.

1800.

CHAPTER CCXCVI.

An ACT to amend an act entitled "an act concerning Towns in this Commonwealth."

Approved December 17, 1800.

Vide Vol. I, Chap. 269, and the Notes.

Preamble.

WHEREAS it is represented to this general assembly, that the law regulating towns in this commonwealth is defective :

Number of trustees of a town to be fixed by the county court.

Sec. 1. *Wherefore, be it enacted by the general assembly,* That the county courts in each county shall have power to fix the number of trustees which belong to each town in their respective counties ; and until such county courts shall otherwise direct, each town shall have five trustees, any three of whom shall be a sufficient number to do business.

Clerks to continue in office.

Sec. 2. When a clerk shall be appointed for trustees, he shall hold his office until he shall resign, or be removed by special order of the trustees ; and the old trustees going out of office, shall not be a cause of removal, but he shall be considered the clerk of the new board of trustees.

Elections for trustees to be held annually by the clerk, and when.

Who entitled to vote.

Clerk to take an oath.

How to conduct the election and to make return.

If no election is held.

Vacancies how filled.

Plans to be recorded.

Rules, &c. to be made.

Inhabitants not to work on roads.

Trustees may tax the inhabitants.

Sec. 3. Elections for trustees shall be held annually, by the clerk of each town (entitled by law to have an election) on the first Monday in August ; and each free male person of the age of eighteen years, being an actual resident of said town, or holding title to real estate therein, shall be entitled to vote ; and the clerk when appointed, shall take the necessary oath of office ; and it shall be the duty of the said clerk, who shall be the presiding officer thereof, to conduct the said election in a fair manner, and make due return of the persons elected to the clerk of the county court, who shall record the same. And if no election shall be held, the county court at their next term shall appoint trustees ; and vacancies shall be filled by the county court, when necessary. And the trustees of towns in this commonwealth shall have the plans of their towns recorded in the county courts, and shall have power to make rules for the regulation and good order of the place, as they shall deem necessary ; provided it is not contradictory of the law of the land. And inhabitants of towns shall not be bound to work on roads more than one half mile from town.

Sec. 4. The trustees of towns shall, for the benefit thereof, have power to tax the inhabitants and freehold-

ders of their towns, in such manner as they shall deem equitable, provided such tax shall not amount to more than six shillings annually, on any one person. And they shall have power to take all necessary measures to collect the same, and appoint a person to collect it for them, and at the end of their time, they shall be bound to settle for the same with the county court. And whatever sum appears unappropriated, shall be paid to the county court in trust for the succeeding trustees. And the county court shall have power to summon the old trustees to a settlement, and enforce a settlement, and enter judgment and issue execution for the same, if necessary.

1800.

To what amount.

Appoint a collector.

And settle their accounts.

Balances how paid over.

And settle-ments how made.

And whereas in some towns, elections have taken place heretofore, and in others, the county courts have appointed trustees, and doubts have arisen as to the legality of such trustees :

Recital.

Sec. 5. *Be it also enacted*, That the present acting trustees in each town, shall be the legal trustees thereof, and their proceedings shall be as good and valid in law as if they had been regularly and legally appointed or elected : and where trustees are now wanting in any town, the county court shall appoint the same.

Trustees now in office confirmed.

Sec. 6. *And be it further enacted*, That the town of Lexington in the county of Fayette, the town of Louisville in the county of Jefferson, the town of Frankfort in the county of Franklin, the town of Washington in the county of Mason, the town of Danville in the county of Mercer, the town of Paris in the county of Bourbon, Georgetown in the county of Scott, Springfield in the county of Washington, Cynthianna in the county of Harrison, the town of Jefferson in the county of Jefferson, Bardstown in the county of Nelson ; Middletown, Williamsville and Newton in the county of Jefferson, and Harrodsburgh in the county of Mercer, are hereby excepted from this act, and are not to be in any wise affected by any regulation herein contained.

Certain towns excepted out of this act.

Sec. 7. And whereas in the act passed in the year one thousand seven hundred and ninety-nine, entitled "an act establishing the boundary of lots in the town of Shelbyville, and for other purposes," a mistake hath taken place, by numbering a lot twenty-one, which, in truth and in fact, is forty-one : wherefore,

Error in a certain act corrected.

Be it enacted, That the number twenty-one in said act shall hereafter be construed forty-one.

No. 21 to be construed 41.

1800. Sec. 8. The trustees which shall be for the town of Westport, on the Ohio, in the county of Henry, may permit the proprietors of said town to make deeds for the lots at any time actually sold by the trustees, which deeds shall be as good as if made by the trustees. And the plan of Westport in possession of the old trustees, made by William Hogshead, shall be recorded as the plan of Westport; and the said plan shall hereafter be the boundary of said town, subject to the powers of the trustees as in other towns.

How deeds to
lots in West-
port may be
made.
Plan thereof to
be recorded.

To commence.

This act shall be in force from the passage.

CHAPTER CCXCVII.

An ACT to amend the act entitled "an act regulating Elections."

Approved December 19, 1800.

See the observations on Chap. 6, Vol. I.

Election of sen-
ators in certain
districts in 1801

In 1802.

In 1803.

SECTION 1. *BE it enacted by the general assembly;* That an election for senators to represent the senatorial districts, shall be held as follows: for the district containing the counties of Barren and Warren; for the district containing the county of Fayette; for the district containing the county of Mercer; for the district containing the county of Washington; for the district containing the counties of Campbell, Pendleton and Boone; and for the district containing the county of Bourbon, on the first Monday in August, in the year 1801, and on the same day and month in every fourth year thereafter. For the district containing the county of Madison; for the district containing the counties of Harrison and Bracken; for the district containing the county of Lincoln; for the district containing the counties of Livingston, Henderson, Muhlenburg and Ohio; for the district containing the counties of Logan and Christian; for the district containing the county of Woodford; and for the district containing the counties of Shelby and Henry, on the first Monday in August, in the year 1802, and on the same day and month in every fourth year thereafter. For the district containing the county of Nelson; for the district containing the county of Fleming; for the district containing the county of Clark; for the district containing the county of Jefferson; for the district containing the counties of Franklin and Gal-

latin ; and for the district containing the county of Mason, on the first Monday in August, in the year 1803, and on the same day and month in every fourth year thereafter. And for the district containing the counties of Cumberland and Pulaski ; for the district containing the counties of Bullitt and Hardin ; for the district containing the county of Greene ; for the district containing the county of Montgomery ; for the district containing the county of Scott ; and for the district containing the counties of Jessamine and Garrard, on the first Monday in August, in the year 1804, and on the same day and month in every fourth year thereafter.

1800.

In 1804.

Sec. 2. *And be it further enacted*, That the elections aforesaid shall be conducted in the same manner, and under the same rules and regulations as are prescribed by the act entitled "an act regulating elections," passed November session, 1799, any law or laws to the contrary notwithstanding.

To be conducted according to the act of 1799.

Sec. 3. *And be it further enacted*, That in all cases of elections of a governor, or lieutenant governor, or of a member of either house of the general assembly, when the poll shall be kept open for more than one day, the judges and sheriff conducting the same, shall each day at the close of the polls examine the state thereof ; and the sheriff upon such examination, shall proclaim the result thereof at the court house door, or at the door of the house in which an election shall be held, in any precinct established by law.

Duty of judges and sheriffs.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER CCXCVIII.

An ACT concerning Alimony.

Approved December 20, 1800.

SECTION 1. *BE it enacted by the general assembly*, That any court of quarter sessions or district court, shall be vested with jurisdiction to hear and determine applications from wives against their husbands for alimony, in cases where the husband has, or may hereafter desert or abandon his wife for the space of one year successively, or where he lives in open avowed adultery with another woman for the space of six months, and in cases of cruel, inhuman and barbarous treatment.

In what courts, and for what causes alimony may be sued for

1800. *Mode of proceeding in suits for alimony.* Sec. 2. The said application shall be by exhibiting a bill in chancery, alleging the cause why alimony is claimed ; on which shall be had the same proceeding as in other suits in chancery to bring the same to a hearing : at which a jury shall be empannelled to inquire into such facts as may arise from the allegations of the bill, or from the matters put in issue in the cause by the pleadings, as the case may be ; and if on the inquiry, any one of the before recited causes shall be found to exist, the court shall decree to the complainant alimony out of the defendant's estate, and shall have and possess the same power to carry their decrees into effect, as in other cases. But alimony shall not be granted in case of open adultery on the part of the wife.

In what cases it shall not be granted. Sec. 3. After a decree for alimony, the power of the husband over the wife, shall cease and determine, and she shall have a right to use her said alimony, and to acquire, use, and dispose of, any property whatever, without being subject to the controul, molestation or hindrance of her said husband, in the same manner as if she was a *feme sole*.

After decree the wife may in certain cases act as a feme sole. Sec. 4. Where the husband shall be about to remove himself and his effects out of the state, or where there is reason to suspect that he will fraudulently convey away or conceal his property, the court, or any judge or justice thereof, in vacation, shall have power to grant writs of *ne exeat* or injunction, in their discretion, and to make such order as will secure alimony to the wife.

Proceedings where the husband is about to leave the state, &c.

CHAPTER CCXCIX.

An ACT to amend the act entitled " an act to amend the Penal Laws of this Commonwealth.

Approved December 20, 1800.

Vide Chap. 4, of this Vol, and the Notes.

BE it enacted by the general assembly, That every person who shall hereafter be convicted of having forged, counterfeited, or altered, any auditor's warrant, certificate, or other public security, whereby money may be drawn from the treasury of this state, or of having been concerned in printing, writing, signing, or passing any such forged, counterfeited, or altered warrant, certificate, or public security, knowing it to be such, shall be

sentenced to undergo a confinement in the jail and penitentiary house of this state, not less than two years, nor more than five years; and shall be kept, treated, and dealt with in every respect as is directed in case of other persons who are, or shall be confined in the said jail and penitentiary house, agreeably to the act entitled "an act to amend the penal laws of this commonwealth."

This act shall be in force from and after the passage thereof.

1800.

CHAPTER CCC.

An ACT regulating certain Officers' Salaries.

Approved December 20, 1800.

BE it enacted by the general assembly, That the several officers hereafter mentioned shall receive for their salaries, annually, the following sums, that is to say :

To the Treasurer, the sum of	800 dollars,
To the Secretary, the sum of	550 dollars,
To the Attorney General,	850 dollars,
To the Auditor of public accounts,	1100 dollars,
To the Register,	1000 dollars

This act shall commence and be in force from and after the first day of January next.

CHAPTER CCCI.

An ACT to amend the Laws establishing County Courts.

Approved December 20, 1800.

See the preface on Chap. 23, Vol. I.

WHEREAS doubts have arisen how the law establishing county courts, and the right of appeals from the judgment of a single magistrate ought to be construed :

Be it therefore enacted by the general assembly, That where a judgment shall be given by a single magistrate (on a warrant) for the defendant, the plaintiff in all such cases, shall have a right to an appeal therefrom, in the same manner as defendants now have a right to, in cases where judgments have been given against them for twenty-five shillings and upwards : *Provided,* the sum claimed by such plaintiff, be to the value of twenty-five shillings.

This act shall have effect from the first day of April next.

1800.

CHAPTER CCCII.

An ACT concerning the Court of Appeals.

Approved December 20, 1800.

*Vide the preface to Chap. 24, Vol. I.*Certain act re-
pealed.

SECTION 1. *BE it enacted by the general assembly,* That so much of the act passed last session of general assembly entitled "an act for enlarging the jurisdiction of the general sessions held in Frankfort, for regulating proceedings in the court of appeals in certain cases, and for other purposes," as respects the court of appeals, except the fourth, fifth and seventh sections of the said act, shall be, and the same is hereby repealed.

Court of appeals
to hold three
terms, & when.The length of
the terms.How the terms
may be enlar-
ged.Provision in case
a court should
not be formed
on the first day
of the term.Or on any day
of the term.On writs of er-
ror or appeal,
when the re-
cord is to be
lodged.When appeals
and writs of er-
ror stand for tri-
al.

Sec. 2. *And be it further enacted,* That hereafter the court of appeals shall hold three terms in every year; the first term to commence on the first Monday in March, the second term to commence on the first Monday in July, and the third term to commence on the first Monday in November, in every year; each term to hold twenty-four days, Sundays excepted, if the business before the court shall require it; and in case the judges at any term shall deem it necessary to sit longer to do the business before them, they shall have power, at any time more than five days before the end of the term, to add any number of additional days to that term, which order shall be entered of record; and in case in any term a court shall not be made on the first day thereof, the court shall stand adjourned from day to day, for seven days, unless a court shall be sooner formed; and if from any cause, after a court shall meet, the court shall not sit on any day of a term, the court shall not thereby be adjourned, but may sit again and proceed to business as soon as the cause shall be removed.

Sec. 3. *Be it further enacted,* That whenever a writ of error shall be sued out, or wherever an appeal shall be granted, the record shall be returned to the clerk of the court of appeals, on or before the third day of the first court, unless for good cause shewn, the court shall grant a further day, which in appeals and writs of error (which shall have been made *supersedeases*,) shall not be beyond the third day of the second term.

Sec. 4. Appeals and writs of error shall stand for trial at the court to which the record shall be returned; and in writs of error, the pleadings, (when necessary) shall

be had in court ; but the court, for good cause shewn, may grant a continuance in any cause before them, under such equitable restrictions as they shall deem right.

1800.

This act shall be in force from the passage thereof.

To commence

CHAPTER CCCIII.

An ACT to amend an act entitled "an act for the division of Hardin County.

Approved December 20, 1800.

BE it enacted by the general assembly, That the voters in the county of Breckenridge shall, and they are hereby authorised and directed to give in their votes at the next general election for representatives, and forever thereafter, until altered by law, at the court-house of the said county of Breckenridge, in the same manner and under the same regulations as other elections are conducted and holden. The judges shall certify from under their hands, a true state of the polls, and the sheriff of the said county, shall, within five days after the commencement of the election, make return of the polls to the sheriff of Hardin county, and the said sheriff of Hardin county, shall add the polls of Breckenridge county to the polls of Hardin county, and they shall be considered and taken to all intents and purposes as the polls of Hardin county ; and the sheriff of Breckenridge county shall be entitled to the same allowance for conveying the polls to the sheriff of Hardin county, as is allowed to other sheriffs in similar cases, which shall be paid out of the county levy of the county of Breckenridge.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCIV.

An ACT regulating the Fees of Surveyors in certain cases.

Approved December 20, 1800.

WHEREAS the numerous disputes in land titles in this commonwealth, renders it a matter of the highest importance to the good citizens thereof, that the expenses arising from a legal investigation of those titles should be as cheap as possible, consistent with an adequate allowance to the officers whose agency may be re-

Preamble.

1800.

quired in such investigation : And whereas the charges made by some surveyors for services performed under orders of survey, directed from the courts of this commonwealth, in suits depending therein, greatly exceeds a just and reasonable compensation for their services, and is burthensome and oppressive upon litigants : For remedy whereof,

Sec. 1. *BE it enacted*, That all surveyors, in making surveys or connections under orders of courts, shall be regulated in their charges by the following fees, viz.—

Surveyor's fees. For services actually performed on the ground at the desire of either party, and to be paid by the party desiring the same,

D. C.

For every three poles actually run, - 1

For every single platt he shall make out from his own field notes taken on the ground, or from any field notes which may be produced to him by either of the parties, and calculating the contents thereof, together with certificate of survey annexed thereto, - 1

For each additional platt laid down by him from any field notes, or from the records, with notes of reference thereto, - 9

For every additional copy of such connected platt required by the court, with certificate of survey and notes of reference annexed thereto, where there is not more than one interference, - 50

For every other platt in the said copy interfering therewith and notes of reference, - 9

Like fees for like services.

Surveyor to state his fee-bill at length on plats. Which may be reduced.

And the like fees shall be allowed for connections made and like services performed on other applications ; and it shall be the duty of the surveyor to state his fee-bill at length on the back of each connected platt he shall return to court ; and in case it shall appear that such surveyor hath charged higher fees than by law directed, the court shall have power to reduce the charge.

Penalty for misconduct.

Sec. 2. *And be it further enacted*, That any surveyor acting under any order of court, shall be liable to all the pains and penalties for misconduct, as surveyors in other cases are, and shall be liable to be proceeded against in like manner.

This act shall commence and be in force from and after the first day of March next.

CHAPTER CCCV.

1800.

An ACT to amend an act entitled "an act to amend and reduce into one the several acts establishing a Permanent Revenue."

Approved December 20, 1800.

Vide Vol. I. Chap. 10, and the Notes.

SECTION 1. *BE it enacted by the general assembly,* That it shall be lawful for the commissioners of the tax hereafter to be appointed, agreeably to the directions of the act passed at the last session of the general assembly, entitled "an act to amend and reduce into one the several acts establishing a permanent revenue," to produce to the auditor of public accounts, their respective certificates to be obtained from the county court, for the amount due for their services, and also for paper furnished to make out lists of taxable property; and the auditor shall issue a warrant for the sum expressed in each certificate so produced to him, which shall be paid out of the public treasury; provided, that such warrant shall not be issued to any commissioner until he shall have lodged with the auditor a certified copy of his list of taxable property for that year.

Commissioners,
how paid.

To obtain a
certificate from
the county
court.

Auditor to issue
his warrant.

Not till lists
lodged with
him, &c.

Sec. 2. *And be it further enacted,* That any person being the security of a sheriff, shall be incapable of holding the office of a coroner in the same county; and any coroner who shall become the security of a sheriff, shall thereby vacate his office; and in all cases where a judgment has been or may hereafter be obtained against any public debtor, and an execution has issued or may hereafter issue thereupon to any sheriff or other lawful officer, and it has appeared or shall appear on the return of such execution, or otherwise, that the sheriff or other officer is interested, or that the property was not sold, for the want of bidders, the auditor shall issue a *venditioni exponas*, directed to any person legally authorised to execute the same; and if the circumstances of the case require it, the auditor may direct the property to be exposed to sale, to be removed out of the county, agreeably to an act entitled "an act respecting delinquent sheriffs;" and in case such *venditioni exponas* should be directed to any person other than the officer who levied the first execution, it shall be the duty of such officer to deliver to the person legally authorised to execute such *venditioni exponas*, all and every species of property ta-

A coroner not
to be security
for sheriff.

Proceedings to
be had on exe-
cutions against
public debtors.

Proceedings on
writs of *vendi-
tion exponas*.

Penalty for fail-
ing to deliver

1800. ^{the property} _{thereon.} ken by him under said execution, and on his failure of refusal so to do, he shall be liable to pay the amount of such execution, with damages and costs, on motion of the auditor, as in other cases of delinquent sheriffs.

To commence. This act shall be in force from the passage thereof.

CHAPTER CCCVI.

An ACT concerning the Salaries of certain judges.

Approved December 20, 1800.

BE it enacted by the general assembly, That if any judge of any court within this commonwealth, who is or shall be entitled to an annual salary, shall fail to attend at any term or terms of a court to which he by law is bound to attend, in every such case there shall be a deduction from his annual salary, proportioning the term or terms so lost, to the terms which by law the said judge was bound to attend; and in order to ascertain the number of terms which the said judge has attended, it shall be necessary for him to produce to the auditor of public accounts, certificates from the clerks of the several courts in which he presides, stating therein the number of terms such judge has attended; and the auditor in issuing his warrant shall be governed as to the same by such certificates: *Provided however,* if it shall appear to the auditor, from the affidavit of the said judge, that such judge was prevented from attending his term or terms as aforesaid, from sickness or unavoidable accident, that in such case the said judge's salary shall not be subject to the deduction aforesaid.

CHAPTER CCCVII.

An ACT to amend the act for the Redemption of certain Certificates, and for other purposes.

Approved December 20, 1800.

Certain war-
rants made re-
ceivable for fees

SECTION 1. *BE it enacted by the general assembly,* That the warrants issued by the auditor of public accounts for this commonwealth, by virtue of the act passed last session of assembly, entitled "an act for the redemption of certain certificates, and for other purposes," shall be receivable by the register of the land office, in

IX. YEAR OF THE COMMONWEALTH.

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discharge of the fees to be paid on platts and certificates of lands which shall be returned to his office.

1800.

Sec. 2. *And be it further enacted*, That when any person or persons shall under the act aforesaid, present to the auditor of public accounts, a certificate or certificates for the purpose of obtaining an audited certificate therefor, and shall furnish the proof in the said act mentioned, the auditor shall, and he is hereby directed to have recourse to the original books of the commissioners in his office; and on finding the said certificate or certificates entered therein, he shall issue an audited certificate therefor, and shall make a note in the margin of the said commissioner's books, which shall operate as a check against counterfeits.

Auditor to issue warrants in certain cases.

This act shall commence and be in force from its passage.

To commence.

CHAPTER CCCVIII.

An ACT to reduce into one the several acts concerning the Trial of Slaves.

Approved December 20, 1800.

See Vol. I. Chap. 44.

WHEREAS considerable inconvenience hath resulted to slaves and slave-holders within this commonwealth, from the length of time for which slaves accused of certain crimes, have, under the present law regulating their trial, been confined in prison: for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the general assembly*, That when a slave or slaves shall be charged with any crime, the justice before whom he or they shall be charged, if there appears to him to be just ground for the charge, shall issue his warrant to the sheriff of the county where the offence was committed, to summon the justices of the court of quarter sessions of the county where the crime is alleged to have been committed, in the same manner, and to meet within the same time, as is directed in the case of a free person charged with any crime; and also to summon a jury of the vicinage, no one of whom shall be master of such slave or slaves, or related to the master or prosecutor of such slave or slaves in any degree which would be a cause of challenge to a jurymen in a trial between free persons, to appear at the

Proceedings in trial of slaves.

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1800. same time and place for the trial of the said slave or slaves. The said justices so met, shall be a court of oyer and terminer, for the trial of the said slave or slaves, and shall cause the crime with which any such slave or slaves may be charged, to be stated in writing, upon which, such court shall proceed to try such slave or slaves, without the intervention of a grand jury, and may adjourn from day to day, or for any number of days not exceeding ten, if the witnesses for the prosecution or for the prisoner can not be sooner had, or if the trial can not be sooner finished.

Three justices to constitute a court, and how convened. Sec. 2. Three justices shall be necessary to constitute a court; and if a sufficient number of justices shall not meet, it shall be the duty of the justice or justices present, to issue a precept under his or their hands, and directed to the sheriff, commanding him to summon such a number of the justices of the county court, (the justice who committed the slave excepted) most convenient, as will be sufficient, together with such justice or justices of the court of quarter sessions, to make up the number required by this act to constitute a court; and such justices shall have the same power and authority, and shall proceed in the same manner as if the court was composed of the justices of the court of quarter sessions, any law to the contrary notwithstanding.

Owner may bail a slave. Sec. 3. *And be it further enacted*, That when any slave or slaves shall be imprisoned under this act, the owner of such slave or slaves may bail such slave or slaves in those cases in which free persons are bailable, agreeable to the rules established by law with respect to free persons.

Repealing clause. The act entitled "an act to amend and declare the law relative to the trial of slaves," and every other act or part thereof, coming within the purview of this act, shall be, and the same is hereby repealed.

CHAPTER CCCIX.

An ACT to amend the several acts concerning the Militia.

Approved December 20, 1800.

See the observations on Chap. 17, Vol. I.

CHAPTER CCCX.

1800.

An ACT to amend the act entitled "an act for the endowment of certain Seminaries of Learning, and for other purposes."

Approved December 20, 1800.

SECTION 1. *Be it enacted by the general assembly,* That the trustees of the respective academies or seminaries of learning now established, or which may hereafter be established under the act entitled "an act for the endowment of certain seminaries of learning, and for other purposes," as also the trustees of such other academies as have heretofore been established by any former law of this commonwealth, shall be, and they are hereby authorised to sell or otherwise dispose of any part of said lands, not exceeding one-eighth part of the quantity granted by the above recited acts, for the purpose of locating and surveying the same, or to reimburse those who have heretofore expended any money or property in locating or surveying said lands.

Part of the land to be disposed of to secure the balance.

Sec. 2. *And be it further enacted,* That the trustees of the several academies aforesaid be, and they are hereby further authorised to sell or otherwise dispose of one-eighth part of the remainder of the before mentioned lands, and to apply the proceeds thereof to such other purposes which they may deem most beneficial for the support and carrying into effect the above mentioned institutions.

And a further part for other purposes.

Sec. 3. *And be it further enacted,* That the several county courts who may have, or shall hereafter locate lands agreeably to the before recited act, shall be entitled to the same privileges, and be authorised to dispose of the same proportion of their lands as the trustees of the several academies are by this act.

County courts to have the same privileges.

Sec. 4. *And be it further enacted,* That the further time of two years be, and it is hereby allowed the trustees aforesaid, to locate and return the platts and certificates of surveys made on such locations, to the register's office, for all lands granted to the said academies by the before recited acts.

Further time given to locate, &c. donation lands.

This act shall be in force from its passage.

To commence

NOVEMBER SESSION,

1800.

CHAPTER CCCXI.

An ACT supplementary to the act entitled "an act granting relief to Settlers South of Green river."

Approved December 20, 1800.

See Vol. I. Chap. 220, and the Notes.

BE it enacted by the general assembly, That the nine annual instalments directed by the act entitled "an act granting relief to settlers south of Green river," passed this present session of assembly, to be paid by the persons from whom money may be now, or may hereafter become due, for lands held by virtue of a certificate or certificates by settlers south of Green river, or their assigns, shall be equal to each other; and at the time each instalment shall become due, so much of the interest upon the whole of the instalments, to be computed from the first day of December, one thousand eight hundred, as may have not been paid, shall then be paid with such instalment into the public treasury.

CHAPTER CCCXII.

An ACT for settling and improving the Vacant Lands of this Commonwealth.

Approved December 20, 1800:

See the preface to Chap. 220, of Vol. 1.

Preamble.

WHEREAS it is represented to this assembly, that there is still in this state large quantities of vacant lands, which by being occupied by the citizens thereof, whose interest it may be to hold it, or by any citizens of the United States, or foreigners, who being thereby encouraged to reside thereon, will greatly add to the population, wealth and consequence of this state:

What persons entitled to improve, &c. lands by residing thereon.

Provido.

Sec. 1. *BE it enacted by the general assembly of this commonwealth,* That it shall be lawful for any free person of the description aforesaid, above the age of eighteen years, to improve, occupy and hold, of the vacant lands aforesaid, four hundred acres; *Provided,* that he or she actually settles and resides thereon: *Provided,* that no person who now holds any land obtained by certificate under any act of the assembly of this state for encouraging and granting relief to settlers south of Green river,

shall be authorised to appropriate under this act, more than two hundred acres, in addition to the quantity he may have acquired under the laws aforesaid. 1800.

Sec. 2. *Be it further enacted*, That where any person shall settle himself on any vacant land as aforesaid, he shall, within three months after such settlement, apply to the court of the county in which such settlement is made, and upon proving to them, that he has actually made such settlement, be entitled to a certificate for the quantity of land to which he may be entitled under this act, including such settlement in which said certificate shall be contained, a special location, describing as accurately as may be, the land contemplated to be included in said certificate, a duplicate of which said certificate, shall be made out by the clerk and delivered to the claimant; who shall pay the said clerk one shilling therefor.

In what time to apply to county court for certificate for lands improved, &c.

Sec. 3. *And be it further enacted*, That the person obtaining such certificate shall, within twelve months after the date thereof, upon producing the same to the register of the land-office, and paying to the treasurer at the rate of twenty dollars per hundred acres, shall be entitled to a warrant for the same, in which warrant shall be contained the location as specified in the certificate, for which warrant the proprietor shall pay to the register, twenty-five cents.

How warrants for certificates to be obtained, and at what price.

Sec. 4. *And be it further enacted*, That the said warrant shall be located within six months after the date thereof, with the surveyor of the county in which the lands may be, in the words of the certificate, and shall cause the same to be surveyed within twelve months thereafter, for which a patent shall issue, upon paying the usual fees, as in other cases.

Warrant to be located, & how.

Sec. 5. *And be it further enacted*, That no location or survey which shall be made in virtue of this act, shall in its length exceed its breadth more than one-third, unless interrupted by prior claims only.

How surveys on such location to be made

Sec. 6. *And be it further enacted*, That in all contests by settlers under this act, those who first did actually and *bona fide* settle and reside on said lands shall have the preference. And all persons who may have actually settled themselves as aforesaid, prior to the passage of this act, shall be entitled to the provisions thereof, and shall on or before the first day of August next, obtain their certificates from the county courts as aforesaid.

Contests between settlers, under this act, how to be determined, &c.

1800. *Sec. 7. And be it further enacted,* That every person obtaining a certificate under this act, shall, before he obtains a patent therefor, actually and *bona fide* settle and reside thereon two years, during which time no assignment or transfer shall be lawful.

Two years actual residence to be had before patent granted.

What time allowed persons to obtain certificates for their improvements, &c.

How this act shall be construed.

Sec. 8. And be it further enacted, That if any person who now has, or shall hereafter settle on any vacant lands as aforesaid, and shall not obtain from the county court his certificate, or when obtained, shall not obtain from the register, his warrant therefor, within twelve months, as aforesaid, it shall be lawful for any other person immediately to procure a certificate for the said land, and having paid the amount of the money due, to obtain a warrant therefor, survey the same, and carry it into grant. Nothing in this act shall be so construed as to authorise any person or persons to locate any salt lick or spring, or any mine of mineral or ore, with 1000 acres of land around the same, including the said lick or spring in the centre of a square to be bounded by lines running to the cardinal points.

CHAPTER CCCXIII.

An ACT authorising the Editor of the Farmer's Library, &c. to publish Advertisements of a public nature, in certain cases.

Approved December 1800.

He was authorised to publish all advertisements not particularly confined to the paper of the public printer.

CHAPTER CCCXIV.

An ACT for the relief of William Ford.

Approved December 20, 1800.

He was sheriff of Fayette county, and as such, was much indebted to the State. This act released him from interest, for as much as he should pay within nine months.

CHAPTER CCCXV.

An ACT authorising the Governor to appoint Commissioners for the purpose of viewing a Road from this State to intersect the road leading from the States of Georgia and Tennessee.

Approved December 18, 1800.

The commissioners were to be sworn faithfully and impartially to view the nearest and best way, and make report to the governor, with a certificate of

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their having been sworn ; and the governor was required to transmit to the governors of Tennessee and Georgia, copies of this act, and lay before the assembly of Kentucky, the report of the commissioners.

1800.

CHAPTER CCCXVI.

An ACT for the relief of Edward Faris.

Approved December 4, 1800.

The price of 22 acres of land, which he had overpaid, was refunded to him by this act.

CHAPTER CCCXVII.

An ACT for the relief of Robert Hodgens, Sheriff of Hardin County.

Approved December 4, 1800.

He was allowed six months to complete his collections, and obtain a quietus.

CHAPTER CCCXVIII.

An ACT for the relief of Charles Davis.

Approved December 15, 1800.

He was sheriff of Henderson. This act allows him six months to complete his collections.

CHAPTER CCCXIX.

An ACT for the relief of John Davidson and David Caldwell.

Approved December 17, 1800.

They were Green river settlers, and first settled, through mistake, on military land, of the first quality ; discovering their mistake, they removed their locations upon second rate land—yet they stood charged as for first rate. This act provides that they shall be chargeable only for second rate.

CHAPTER CCCXX.

An ACT for the relief of John Chism, Sheriff of Green County.

Approved December 18, 1800.

This act relieves him from the consequences of a mistake made by the clerk, subjecting him to the payment of the whole revenue, when he had never undertaken the collection of more than the half.

NOVEMBER SESSION,

1800.

CHAPTER CCCXXI.

An ACT for the relief of George Reading.

Approved December 18, 1800.

He was allowed twelve months to fix a lock and slope to his dam, across the south fork of Licking.

CHAPTER CCCXXII.

An ACT regulating the Salary of the Keeper of the Jail and Penitentiary House.

Approved December 20, 1800.

He was allowed 500 dollars per annum, payable in quarterly payments.

CHAPTER CCCXXIII.

An ACT to revive and continue the Logan District Court.

Approved December 19, 1800.

This act revives and continues the act passed in November, 1798—*240d.*, vide ante Chap. 104, of this Vol.

CHAPTER CCCXXIV.

An ACT altering the time of holding Courts in certain Counties.

Approved December 20, 1800.

This act alters the time of holding courts in the counties of Livingston, Christian, Logan, Muhlenberg, Ohio, Henderson, Warren, Breckenridge and Nelson.

CHAPTER CCCXXV.

An ACT for the relief of sundry Citizens of Mason County, and others.

Approved December 20, 1800.

Thomas Dobyns had proceeded to collect arrearages of taxes without having entered into bond and security according to law. This act renders valid all payments to him made, and makes his receipts good in discharge of taxes, provided the holder of them will swear before some county court, that the sum expressed in the receipt, was actually paid, and that he then believed Dobyns to be legally authorized to receive it.

CHAPTER CCCXXVI.

An ACT authorising Commissioners to fix the permanent Seat of Justice for the County of Bracken, and establishing the proceedings of the Commissioners of the said County.

Approved December 4, 1800.

Commissioners were appointed to fix on some place for the permanent seat of justice.

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CHAPTER CCCXXVII.

1800.

An ACT legalising the proceedings of the County Court of Nicholas, in appointing Commissioners of the Tax.

Approved December 11, 1800.

CHAPTER CCCXXVIII.

An ACT to amend an act entitled "an act to appoint Trustees to convey certain Lands of Robert Todd, deceased."

Approved December 13, 1800.

One of the trustees having died, and another removed, this act appoints three additional ones—vests the new board with all the powers the first board had, and provides that any three shall be sufficient to proceed to business.

CHAPTER CCCXXIX.

An ACT authorising the County Court of Warren to appoint Commissioners of the Tax; and to lay their levy, and granting further time to the Sheriff of the said County to collect the Tax.

Approved November 26, 1800.

The act amending an act establishing a permanent revenue, not having reached Warren county time enough for them to act under it in the time required, this act authorises them yet to appoint commissioners, and to lay their county levy for 1800, in April ensuing—gives authority to the sheriff to distrain for taxes and levies after the first day of June, and makes him accountable for them on the first day of November.

CHAPTER CCCXXX.

An ACT granting certain Lands to Joshua Jones.

Approved December 13, 1800.

The grant was of 1000 acres, to enable him to carry on a Bloomery—the price, thirty dollars per hundred acres.

CHAPTER CCCXXXI.

An ACT for the relief of Christiana Smith.

Approved November 26, 1800.

This act authorised a divorce from her husband, Terrence Smith, on a jury's finding that he had treated her inhumanly and barbarously, and afterwards deserted her for one year, or failed to contribute any thing towards the support of her and her children, during the time of such desertion.

NOVEMBER SESSION,

1800.

CHAPTER CCCXXXII.

An ACT authorising John Mullin to locate six hundred acres of Land.

Approved December 15, 1800.

He was entitled, as heir to his father, a revolutionary soldier, to 600 acres of land. By the neglect of the superintendant, it had not been surveyed until the time of surveying had expired. This act authorises a survey yet to be made, and patent to issue.

CHAPTER CCCXXXIII.

An ACT for the relief of James Harrow, and others.

Approved December 17, 1800.

They were purchasers of a claim which they supposed had been patented, whereas it stood only on entry, and so stood until the time of surveying had elapsed. This act authorises a survey to be made and a patent to issue.

CHAPTER CCCXXXIV.

An ACT for the relief of Elizabeth Spaun.

Approved December 17, 1800.

In consideration of her poverty, she was credited for the state price of a settlement right on Green river, until 1810.

CHAPTER CCCXXXV.

An ACT for the relief of Philip Buckner.

Approved December 11, 1800.

As the proprietor of the certificate for the price of a boat, impressed for general Clarke's expedition, in the year 1786, he was allowed the amount with interest, from December 1799.

CHAPTER CCCXXXVI.

An ACT for fixing the Seat of Justice for the County of Gallatin.

Approved December 18, 1800.

This act appointed commissioners to fix it.

CHAPTER CCCXXXVII.

An ACT authorising Michael Woods to locate fifty acres of vacant Land, for certain purposes.

Approved November 26, 1800.

It was for the purpose of building a mill on the waters of Rockcastle.

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CHAPTER CCCXXXVIII.

1800.

An ACT authorising Elijah M. Covington to locate certain Lands.

Approved December 17, 1800.

It was to supply timber for his Iron-works, in Warren county. He was allowed 1000 acres, at thirty dollars per hundred acres.

CHAPTER CCCXXXIX.

An ACT altering the time of holding certain Courts.

Approved December 17, 1800.

By this act, the time of holding courts in the counties of Garrard, Jefferson, Lincoln, Green, Hardin, and Floyd, was altered.

CHAPTER CCCXL.

An ACT to appoint Commissioners to settle the account of the Managers and Trustees of the Lexington Chances of Insurances.

Approved December 20, 1800.

CHAPTER CCCXLI.

An ACT concerning the Jail and Penitentiary House.

Approved December 20, 1800.

By this act, the inspectors were authorized and required to have certain work done, in and about the penitentiary, and certify the same to the auditor. By the same act, £370 19s. 3d. were appropriated to George Rowland and others, to discharge sundry balances due for building and furnishing materials for the jail and penitentiary house.

CHAPTER CCCXLII.

An ACT for the relief of Christiana Tully.

Approved December 18, 1800.

Her husband had been assassinated by the Harps; in consideration of which, this act gave her credit without interest, for the state price of 200 acres of Green river land, until December 1st, 1810.

CHAPTER CCCXLIII.

An ACT for the Appropriation of Money.

Approved December 20, 1800.

This act contains only the ordinary annual appropriations, for which no permanent provision is made by the existing laws.

November Session, 1801.

1801.

CHAPTER CCCXLIV.

An ACT to prevent Slaves in certain cases guilty of felony, and executed therefor, from being paid for by this State.

Approved November 26, 1801.

See Vol. I. Chap. 44.

BE it enacted by the general assembly, That any slave brought to this state for merchandize, or which shall be passing through this state by land or water, to the Spanish dominions, or Mississippi territory, or to any other state or country, who may commit felony, for which they are tried and executed by the laws of this commonwealth, shall not be paid for out of the public treasury.

This act shall be in force from and after the passage thereof.

CHAPTER CCCXLV.

An ACT authorising the Treasurer to receive Audited Warrants in certain cases.

Approved December 1, 1801.

BE it enacted by the general assembly, That the treasurer be, and he is hereby authorised to receive in payment for lands granted under the act entitled "an act for settling and improving the vacant lands within this commonwealth," passed December the 20th, 1800, the same kind of audited warrants specified in the act entitled "an act for the redemption of certain certificates, and for other purposes," passed December 21, 1799.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXLVI.

1801.

An ACT to amend and explain an act entitled "an act appointing an additional number of Trustees to the Jefferson Seminary."

Approved December 2, 1801.

SECTION 1. *BE it enacted by the general assembly,* That the present board of trustees of the Jefferson seminary, or a majority of them, or their successors in office, shall be, and they are hereby authorised and empowered to remove the seat of the said seminary, established by the former board of trustees, if to them it shall seem expedient; and to establish the same permanently, at such place in the said county of Jefferson, as they shall think fit.

Sec. 2. *And be it further enacted,* That in no question relating to said seminary, shall more than a majority of the trustees be necessary to determine the same.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXLVII.

An ACT giving further time to return Platts and Certificates to the Register's Office.

Approved December 2, 1801.

See Vol. I. Chap. 38, and the Notes.

BE it enacted by the general assembly, That the further time of two years from and after the end of this present session of assembly, be allowed the owners of platts and certificates of survey, to return the same into the register's office; in which time, the register of the land office shall receive all platts and certificates of survey, although not returned within the time limited by law; and such land shall not be considered forfeited or liable to forfeiture on that account.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXLVIII.

An ACT for the division of Green County.

Approved December 11, 1801.

BE it enacted by the general assembly, That from and after the first day of April next, all that part of the

1801. Boundaries,	<p>county of Green, included within the following bounds, to wit : beginning on Green river, ten miles on a straight line above Green court-house ; thence a line so as to strike a point one quarter of a mile due north from maj. Daniel Tabue's house ; thence a line to strike the Barren county line, so as to leave James Mitchell one quarter of a mile in the county of Green ; thence with the Barren line to Cumberland county line ; thence with said line to Wayne county line, and with said line to Pulaski county line ; thence with said line to Lincoln county line ; thence with the same to the ridge dividing the waters of the Rolling fork from Casey's creek ; thence to the head of the ridge between Casey's creek and Robinson's creek ; thence with said ridge to Green river ; thence with the same to the beginning, shall be one distinct county, and called and known by the name of Adair.</p>
Name.	
County courts, when held. Quarter session courts.	<p>After said division shall take place, the courts for the said county of Adair, shall be held on the second Tuesday in each month ; and the courts of quarter sessions shall be held in the months of February, May, August, and October ; and the county courts in every other month in which the quarter session courts are not herein directed to be held, in such manner as is provided by law in respect to other counties within this common-</p>
When & where justices to meet, and for what.	<p>wealth. The justices, to be named in the commission of the peace for the said county of Adair, shall meet at the house of James Walker, sen. in the county aforesaid, on the first court day after the said division shall take place ; and having taken the oaths prescribed by law, and a sheriff being duly qualified, the court shall proceed to appoint a clerk, and fix on a place for the seat of justice for said county, and proceed to erect the public buildings at such place : <i>Provided</i>, that the place for erecting the public buildings shall not be fixed, or a clerk appointed, (except <i>pro tempore</i>,) unless a majority of the justices in appointment in said county, concur ; but shall be postponed until such majority can be had ; provided also, that the justices in fixing on a place for erecting the public buildings, shall take into view the boundary and local situation of the county, and fix on such a place as appears will be most convenient to the citizens of said</p>
Provido.	<p>county in general. And it shall be lawful for the sheriff of Green county to make distress for any public</p>
Sheriff of Green to collect public dues therein	

dues or officers' fees unpaid by the inhabitants of the county of Adair at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been passed. The said county of Green shall have jurisdiction in all actions and suits depending therein at the time of such division, and shall try and determine the same, issue process and award execution thereon. And the said county of Adair, in all elections for governor, lieutenant-governor, members of congress, senator or representative to serve in the general assembly of this state, shall be considered as part of the county of Green, until they are entitled to a separate representation: *Provided however*, that it shall be lawful for the voters in the said county of Adair, to vote at the court-house of said county; and an election shall be held in like manner as is by law directed to be held in other counties; and the sheriff of the said county of Adair shall attend at the court-house of Green on the sixth day after the commencement of the election, to compare polls with the sheriff of Green, in like manner as is directed by law in similar cases.

1801.

Certain jurisdiction retained.

In all elections to be considered as a part of Green.

Provide.

CHAPTER CCCXLIX.

An ACT to amend the act concerning Public Roads.

Approved December 11, 1801.

Vide Vol. I, Chap. 296, and the Notes.

SECTION 1. *BE it enacted by the general assembly*, That all public roads from the seat of justice in one county, to the seat of justice in another county, or to any salt-works, or to the seat of government, shall be kept at least thirty feet wide; and such parts thereof as the county courts may think proper, as much wider as said courts may at any time think proper to order, not exceeding forty feet, so smooth that carriages may pass with convenience; but it shall be the duty of the court before they make such order, to direct summons to be issued to the proprietors and tenants of the land through which the road passes that is proposed to be enlarged, if they be in the county, and if not, then to their agents therein, if any they have; and the same proceedings shall be had thereupon as in case of clearing out a new road according to law; and all other public roads shall be kept

Certain roads to be at least 30 feet wide.

And not exceeding 40.

Proprietors to be summoned.

The width of all other roads.

1801.

Duty of clerks
and sheriffs.Regulations as
to working on
roads.To work on
but one road.

To commence.

thirty feet wide, unless the county court shall at any time otherwise order, which they are hereby empowered to do, not reducing it less in width, than fifteen feet.

Sec. 2. The duty of the clerk of each county court and of the sheriff of each county shall be the same as heretofore, respecting public roads, except so far as is repugnant to this act, and so far as may be adapted and conform to the order of the court, made pursuant hereto.

Sec. 3. If any person shall send a male laboring titheable not living in that precinct, to work on any public road in his room, he shall be thereby exempted from working thereon; and if any person shall have two titheables or more, subject to work on any public road, whether they be slaves, children or apprentices, such person shall be exempted from working thereon; and the county court may exempt any person from working on any public road, because of age or infirmity. *Provided however*, that no person shall be compelled to work on more than one road, except in clearing out a new road.

This act shall commence and be in force from its passage.

CHAPTER CCCL.

An ACT concerning the Town of Louisville.

Approved December 11, 1801.

Preamble.

WHEREAS it is represented to the present general assembly, that much injury and confusion is like to accrue to the owners of lots in the town of Louisville, from the manner in which the streets in said town have been laid off by the old and new plan; that the most equitable mode to be pursued in order to avoid the mischief and inconvenience with which they are threatened, will be to establish the streets as they now run, and the squares between the streets as they are now laid out; that the original survey and plan of said town, have been by some means lost or mislaid; so that in case of a contest, with respect to the boundaries of lots, there is no criterion by which the trustees of said town can determine it: And whereas it is also represented, that it is necessary in some cases, for the purchasers of lots in said town, to institute suits in chancery against the trustees; and that previous to the determination of those suits, the

trustees, or some one or more of them, may be out of office, and others elected or appointed in their stead, which will render it necessary to revive the suits against such successor or successors, whereby justice will be manifestly delayed: for remedy whereof,

1801.

Sec. 1. *Be it enacted*, That the trustees of said town, or a majority of them, or their successors in office, shall be, and they are hereby authorised to employ some good surveyor, to survey, under the superintendence of the trustees, the land whereon said town is established, and to make out a plan or platt thereof, and return the same to the board, who shall have the same recorded by their clerk, in books to be provided for that and other purposes, or in the clerk's office of said county of Jefferson; and for defraying the expences accruing thereon, as well as for the survey and platt aforesaid, the trustees, or a majority of them, shall, when they think fit, after the work shall be executed, lay a tax *ad valorem* on the lots in said town, to be collected in the same manner that other taxes in said town are by law directed.

Platt of the town how to be made and recorded.

Expence thereof how defrayed.

Sec. 2. *And be it further enacted*, That if upon the said survey and plan being executed and made out, it shall appear that the streets as they are now laid off in said town, are in their proper places, by beginning at lot number one, upon the new plan (of half acre lots) they shall be, and they are hereby established: and if it be found that there is not a sufficiency of ground to make up to each claimant or purchaser, his half acre lot, between any two cross streets, the surveyor so employed, shall designate on the plan, the square and the quantity deficient therein; which subject may be acted on by the next, or any future legislature.

The streets established.

Sec. 3. *And be it further enacted*, That instead of annual elections of trustees in said town, the same shall be held every second year, on a certain day to be appointed by a majority of the trustees then in office; and such election shall be advertised and conducted in the same manner, and be subject to the same rules and regulations heretofore prescribed by law.

Election of trustees regulated.

Sec. 4. *And be it further enacted*, That if any suit shall be instituted against the trustees as such, and any one, or more of them, shall go out of office previous to the determination of said suit, the same shall not abate.

Suits against trustees not to abate.

1801. *Sec. 5. And be it further enacted,* That the further time of three years be given to the proprietors of lots in said town, to build thereon ; and that no forfeiture shall take place within the said period, for not having built thereon agreeable to the requisitions of the act establishing said town.

Further time to improve lots.
Vacancies how filled. *Sec. 6. And be it further enacted,* That in case of vacancies in the board of trustees of said town, between any two elections, either by death, removal, or resignation, the same may be supplied by a majority of the remaining trustees, who shall elect some fit person to fill such vacancy until an election.

To commence. This act shall commence and be in force from and after the passage.

CHAPTER CCCLI.

An ACT concerning the Boundary Line between this State and the State of Tennessee.

Approved December 14, 1801.

Preamble. WHEREAS doubts have arisen with respect to the position of the boundary line, or some part thereof, between this state and the state of Tennessee : therefore,
Commissioners to be appointed *BE it enacted by the general assembly,* That the governor of this state be authorised and requested, as soon as he is informed that commissioners are appointed on the part of the state of Tennessee, to appoint two commissioners to meet such commissioners, and with them to settle and remove all doubts upon the subject aforesaid, by running and marking the said line, or as much thereof as may not extend within the lands reserved by congress to any Indian tribe, agreeable to the chartered limits of the state of Virginia and North-Carolina ; and the commissioners so appointed, shall have power to employ a surveyor and as many hands as may be necessary to carry the same into effect, at the joint expence of both
Their compensation. states. The commissioners so appointed on behalf of this state, shall receive for their services and expences, three dollars per day, for every day they may be actually employed in going to, continuing on, and returning from said line ; and shall make report to the governor of
To make report. their proceedings, as soon as the same is completed ; and also certify how many hands were employed, and

for what purpose, and what is due to said hands from this state ; which report and certificate, the governor shall lay before the next assembly : and if the proceedings of the said commissioners shall be approved by this state and the state of Tennessee, the line so run and marked shall be the line forever between the said states, unless altered by mutual consent. If any lands claimed under titles derived from the state of Tennessee shall be found, on running the said line as before mentioned, to lie within the limits of this commonwealth, all such claims shall, as soon as a similar and reciprocal law shall be passed by the legislature of the state of Tennessee, on behalf of persons claiming lands lying in the said state, under titles derived from this state, be as valid as if they were derived from this commonwealth. And the auditor, on the order of the governor, shall issue a warrant to the said commissioners for any sum not exceeding one hundred and fifty dollars ; to enable them to provide for the execution of the business assigned them by this act ; and the treasurer shall pay the same accordingly, out of any money in the treasury. The governor of this state shall transmit a copy of this act to the governor of the state of Tennessee as soon as possible, who is requested to lay the same before the next legislature, which shall be held for said state.

1801.

When approved
of, to be bound-
ary line fore-
ver.

Land titles in
certain cases to
be confirmed.

Compensation
to the commis-
sioners.

To be transmit-
ted to the go-
vernor of Ten-
nessee.

CHAPTER CCCLII.

*An ACT authorising the relinquishment of Land Titles,
in the Register's Office.*

Approved December 11, 1801.

See Vol. I. Chap. 142.

BE it enacted by the general assembly, That the register of the land-office is hereby authorised and required to receive any relinquishment of rights to land in the same manner and under the same regulations as are prescribed for the relinquishment of rights to lands with the surveyor of the county in which the land or a greater part of it may lie, by an act authorising persons to relinquish their rights to lands, passed on the fourth day of December, one thousand seven hundred and ninety-four. And where an act of relinquishment shall be executed by an agent, either with the county surveyor or

1801.

the register, it shall be necessary for the surveyor or the register, as the case may be, to receive the power duly authenticated, and record it with such act. The register shall be entitled to receive from the party disclaiming, for every act of relinquishment made with him, or a copy thereof, seventeen cents; and the surveyor or register shall be entitled to fifty cents for recording every power or letter of attorney on which such act of relinquishment may be founded.

This act shall commence and be in force from its passage.

CHAPTER CCCLIII.

An ACT to amend the act entitled "an act to reduce into one, the several acts or parts of acts concerning Sheriffs."

Approved December 18, 1801.

Vide Vol. I, Chap. 16, and the Notes.

Sheriffs to pay money in certain cases.

SECTION 1. *BE it enacted by the general assembly,* That when a sheriff shall receive money upon any execution put into his hands, and the receipt thereof shall be made appear to the satisfaction of the court, either by the receipt of such sheriff, or by any other testimony; in that case the same proceedings shall and may be had against the said sheriff, as are now directed by law to be had, in those cases where his receipt of money appears by his return upon the execution.

Penalty for making a false return.

Sec. 2. *Be it further enacted,* That where any sheriff shall make a false return on any execution whatever, the sheriff making such return, shall be subject to the same forfeiture, and liable to the same penalties that the sheriff is now by law subjected to, in making a false return on execution issued in behalf of the commonwealth.

How recovered.

Sec. 3. *And be it further enacted,* That in every case, where a forfeiture, penalty or damages, is by law, imposed upon any sheriff, the said forfeiture, penalty or damages, (as the case may be) may be recovered by motion in any court of record having cognizance of like sums, in the same manner, and upon the same proceedings that are by law directed to be had against delinquent sheriffs; which motion may be brought by any person aggrieved, or by any commonwealth's attorney where the commonwealth is a party.

Time limited to return list of insolvents.

Sec. 4. *And be it further enacted,* That no sheriff shall hereafter at any time be allowed to return any list of in-

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solvents or other delinquents, or have any credit therefor with the auditor, after three months shall have expired, from the period in which the taxes in such list contained, have become payable from such sheriff by law.

1801.

Sec. 5. So much of any act or acts as comes within the purview of this act, shall be, and the same is hereby repealed.

Repealing
clause.

This act shall be in force from the passage thereof.

To commence,

CHAPTER CCCLIV.

An ACT to amend an act entitled " an act prescribing the mode of obtaining Writs of Certiorari, declaring the cases in which those Writs shall issue, and for other purposes."

Approved December 18, 1801.

Vide ante Chap. 36, of this Vol.

BE it enacted by the general assembly, That no change of venue shall take place, so as to have the cause sent to either of the counties where the parties may reside ; nor shall there be more than one removal of the same cause.

This act shall commence and be in force from and after the first day of March next.

CHAPTER CCCLV.

An ACT concerning Justices of the Peace who may accept the office of Sheriff or Coroner.

Approved December 18, 1801.

Vide Vol. I. Chap. 16, and the Notes.

WHEREAS it is represented to this present general assembly, that doubts have arisen, whether or not a justice of the peace who may accept the office of sheriff, is entitled to his seat in the county court after the expiration of his office as sheriff : for explanation thereof,

Sec. 1. *Be it enacted by the general assembly,* That all justices of the peace who shall accept of the office of sheriff, shall be disqualified from holding or exercising the office of a justice of the peace, unless re-commissioned agreeable to the constitution.

Sec. 2. *And be it further enacted,* That no person while he holds the office of a justice of the peace, or of

1801. the court of quarter sessions, shall be capable of acting
as a coroner in any county within this commonwealth.
This act shall be in force from its passage.

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CHAPTER CCCLVI.

*An ACT giving certain privileges to the Owners of Salt-
Licks.*

Approved December 18, 1801.

Vide ante Chap. 16 of this Vol.

WHEREAS it is of the utmost importance to the good people of this commonwealth, that the owners of salt-licks, or occupiers thereof, should be enabled to manufacture salt with as much ease as possible, and thereby have it in their power to sell it on good terms.

Viewers to be
appointed.

Their duty.

Summonses to
issue.

Also writs of
ad quod dam-
num.

Sec. 1. *Be it enacted by the general assembly,* That whenever the owner or occupier of a salt-lick, shall be desirous of conveying his or their salt-water to timber, by means of troughs or otherwise, and cannot do it conveniently without passing over the lands of others, it shall be lawful for such owner or occupier to apply to the court of the county in which his lick is situated; and the said court shall appoint three or more fit persons to be sworn before a justice of the peace, to view the ground along which such water is proposed to be conducted, and mark out the same by stakes or otherwise, and report to the next court for the county, the name or names of the owners through whose land the said salt water will pass.

Sec. 2. Upon the return of said viewers, the court shall order summonses to be issued to the proprietors and tenants of the land through which the water is proposed to be conducted, if they be found within the county, and if not, to their agents therein, if any they have, to shew cause why such owner or occupier should not have the liberty of conveying his salt-water over their land in manner aforesaid. Upon the return of the summons, if any proprietor or tenant so desire, the said court shall order their clerk to issue a writ in the nature of a writ of *ad quod damnum*, to be directed to the sheriff, commanding him to summon and empanel twelve able and discreet house-keepers of the vicinage, no ways related to either party, to meet at some certain place on the ground through which the said salt-water is propo-

sed to be conducted, and on a certain day to be named by the court, and inserted in said writ, of which notice shall be given by the sheriff to the proprietors or tenants, or their agents, as before directed, if they were not present in the court at the time of the order being made ; which house-keepers, taking nothing, on pain of being discharged from the inquest, and immediately imprisoned by the sheriff, either of meat or drink from either party, from the time they shall come to said place, until their inquest sealed ; they shall be charged by said sheriff, impartially, and to the best of their skill and judgment, to view the lands through which the said salt-water is proposed to be conducted, and say to what damage it will be of to the respective owners and tenants, severally, who desired such writ, taking into estimation the value of the land, as well as any other inconvenience he or they may sustain by the water passing over the land by means of troughs or otherwise ; and if the said inquest cannot be completed in one day, the said sheriff shall adjourn said jurors from day to day, until the same be completed ; which inquest, sealed by the said jurors, together with the writ, shall be returned to the court ; and the court shall thereupon enter up judgment against the person so applying, for the amount of the damages so found ; provided he gives his consent to pay the amount thereof ; and if he refuses, the said court shall enter up judgment for the costs only ; but in either case, the person applying shall be liable for the costs : *Provided always*, execution shall not issue upon said judgment for nine months after it is rendered, if the party applying shall chuse to pay the amount of the damages so assessed ; and if judgment therefor is rendered as aforesaid, the court shall make an order allowing him or them (as the case may be) to erect their works for the conveyance of their salt-water to their timber : *Provided nevertheless*, that nothing in this act shall authorise the conveyance of water between the dwelling-house of any person and their spring, garden, smoke-house, or other buildings, or through any meadow, without the approbation of the owner of such property, or to injure any public road.

This act shall commence and be in force from and after the passage thereof.

1801.

Proceedings
thereon.

Exceptions

To commence.

1801.

CHAPTER CCCLVII.

An ACT to amend an act entitled "an act to reduce into one the several acts for preventing Vexatious Suits and regulating proceedings in Civil Cases."

Approved December 18, 1801.

See the preface to Chap. 264, Vol. I.

Writings may
be given in evi-
dence.

How they may
be impeached.

Security for
costs to be gi-
ven in certain
cases.

Proceedings
thereon.

SECTION 1. *BE it enacted by the general assembly,* That whensoever any suit shall be commenced in any of the courts of this commonwealth, having jurisdiction thereof, founded on any writing, whether the same be under seal or not, the court before whom the same is depending, shall receive such writing as evidence of the debt or duty for which it was given; and it shall not be lawful for the defendant or defendants, in any such suit, to deny the execution of such writing, unless it be by plea, supported by the affidavit of the party putting in such plea, which affidavit shall accompany the plea, and be filed therewith at the time such plea is filed, which affidavit may be made before any justice of the peace, or before the clerk of the court where such suit may be depending.

Sec. 2. *Be it further enacted,* That if any person resident of this commonwealth, shall institute any suit, whether at common law or in chancery, in any of the courts of this commonwealth, and shall after the institution thereof, remove out of this commonwealth, such person shall be bound to give security for the cost of such suit, to be approved of by the clerk of the court where such suit may be depending, in a bond, under such penalty as the clerk may deem proper, conditioned for the payment of all costs that may accrue in consequence thereof, either to the opposite party, or to any of the officers of such court; which bond shall be given in the clerk's office of such court, on or before the first day of the next term of such court, after such removal of the plaintiff, or on failure thereof, such suit may at any time thereafter, be dismissed on motion; and where any bond shall be given in pursuance of this act, it shall and may be lawful for the clerk of the court where the suit is depending, to issue any writ of execution against the plaintiff and the security in such bond, for all costs which may be adjudged by the court to the defendant against the plaintiff in any such suit; and it shall and may be

lawful for the several officers of such court to issue their fee-bills against the security in such bond, in the same manner that they might by law issue them against the plaintiff in any such suit.

1801.

Sec. 3. *Be it further enacted*, That it shall and may be lawful to sue out any writ original or *subpoena* in chancery, from the clerk's office of any of the courts of this commonwealth, in term time, returnable on the same day, or any other day of the same term of such court.

Return of process regulated.

Sec. 4. *And be it further enacted*, That if any practising attorney at law in any of the courts of this commonwealth, shall hereafter, in his official capacity, receive or collect any sum of money for his client or employer, and shall fail or refuse to pay the same when required so to do by the person legally entitled thereto, or to the written order of such person, duly attested, it shall and may be lawful for the person entitled to receive any such sum of money, upon motion made in the court of quarter sessions for the county, or in the district court for the district in which such attorney may reside, having jurisdiction of sums of like amount, to demand judgment against such attorney for all monies by him collected, and unaccounted for to his client or employer; and such court is hereby authorised and required to give judgment for the amount so collected and unaccounted for, together with the legal costs of such motion, and to award execution thereupon: *Provided*, such attorney have ten days previous notice in writing of such motion.

Process against attorneys.

Sec. 5. *Be it further enacted*, That whensoever any writ original, or subsequent process shall be sued out of any of the courts of this commonwealth, and after the execution thereof, the defendant or defendants shall depart this life before interlocutory or final judgment obtained therein, such action shall not abate, if the same were originally maintainable against the executors of such defendant; but it shall and may be lawful for the plaintiff or plaintiffs in any such suit, to have a *scire facias* against the representatives of such decedent, to shew cause why the plaintiff should not sustain such action; and if the plaintiff or plaintiffs in any suit, after the execution of the writ therein, shall depart this life before interlocutory or final judgment, such suit shall not abate, provided the same were originally maintainable.

Suits not to abate by the death of either party.

1801. ble by the executors or administrators of such decedent; but the executors or administrators of such decedent may have a *scire facias* against such defendant or defendants to shew cause why such action should not be sustained against them; which shall be subject to the same rules and regulations as in case of a *scire facias*, after an interlocutory judgment.

Bonds, &c.
How impeached

Sec. 6. *And be it further enacted*, That whensoever any suit is depending in any of the courts of this commonwealth, founded on any writing, under the seal of the person to be charged therewith, it shall and may be lawful for the defendant or defendants therein, by a special plea, to impeach or go into the consideration of such bond, in the same manner as if the said writing had not been sealed; any law to the contrary notwithstanding.

Proceeding on
writs of *scire facias*.

Sec. 7. *And be it further enacted*, That whenever any writ of *scire facias* shall issue from any of the courts of this commonwealth, to renew a judgment against the defendant or against the bail, to shew cause why judgment should not be entered against such bail, or against executors or administrators, it shall and may be lawful for the sheriff or other officer to whom it is directed, to execute the same in like manner as writs of *capias ad respondendum* are by law executed, where no bail is required; and that when such defendant or bail may reside out of the county or district in which any such judgment may have been given, it shall and may be lawful for the clerk of the court to issue such *scire facias*, directed to the sheriff, or other officer of the county, where such defendant or bail may reside; whose duty it shall be to execute the same as above directed, and make return thereof to the court from which it issued; and where a writ of *scire facias* is returned that the defendant or defendants are not found, another shall issue, and if the second is returned that he or they are not found, it shall be considered as sufficient service of the writ; and no declaration shall be necessary on a writ of *scire facias*.

To commence.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER CCCLVIII.

1801.

An ACT to amend the act entitled "an act establishing the Court of Appeals, and for other purposes."

Approved December 19, 1801.

See the preface to Chap. 24, Vol. I.

SECTION 1. *BE it enacted by the general assembly,* Terms of the court.
That the court of appeals shall from henceforth hold two terms in every year; the one commencing on the first Monday in April, and the other on the first Monday in October in every year: and the said court of appeals shall sit at each of the said terms until the business before the court is completed.

Sec. 2. No appeal shall be granted by any inferior court, or received by the court of appeals, unless a final decree, judgment or order, shall have been pronounced or given in the inferior court; nor shall any writ of error be sued out from the court of appeals, or if sued out, be obeyed by the inferior court, unless a final decree, judgment or order, has been pronounced or given in such inferior court in the cause. And to prevent the doubts which have arisen, it is hereby declared, that the final decree, judgment or order, intended by this act, is that which finally terminates the suit in the inferior court; and not any decree, judgment or order pronounced or given, the suit thereafter being still depending.

Appeals and writs of error prohibited in certain cases.

Sec. 3. No appeal shall be taken from the county court, on a judgment affirming or reversing the judgment of a justice of the peace, nor shall a writ of error be issued from the court of appeals to reverse the same.

Appeal or writ of error not to be sued in certain cases.

Sec. 4. *And be it further enacted,* That the court of appeals shall from henceforth be composed of four judges, any three of whom shall constitute a court. The judges of the court of appeals shall in lieu of the salary now allowed by law, receive, each of them, annually, the sum of 833 1-3 dollars, to be paid in quarterly payments.

Number of judges and their salary.

Sec. 5. All returns which would have been made if this act had not passed, to the March term of the said court, shall be made to the April term, and shall be good and valid.

Regulations as to the returns.

Sec. 6. The several courts herein after mentioned, shall from henceforth be held at the following times, to wit:—the general court on the first Mondays in May

General court when held.

1801. and November, in every year ; the district court held in Washington, on the third Mondays in the months of February, May and September, in every year ; the district court held in Paris, on the first Mondays in the months of March and July, and the second Monday in November, in every year ; the district court held in Lexington, on the third Monday in March, the first Monday in June, and the first Monday in September, in every year ; and the district court held in Frankfort, on the second Monday in March, the fourth Monday in June, and the second Monday in September, in every year.

Repealing clause. So much of every act or acts as comes within the purview of this act, shall be, and the same is hereby repealed.

To commence. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLIX.

An ACT to limit the number of Justices of the Peace in the several Counties of this Commonwealth.

Approved December 19, 1801.

SECTION 1. *BE it enacted by the general assembly,* That the numbers of the justices of the peace in the several counties of this commonwealth, shall not exceed those herein after mentioned :—In the county of Adair, eight ; in the county of Bracken, five ; in the county of Breckenridge, six ; in the county of Bourbon, fifteen ; in the county of Boone, eight ; in the county of Barren, eight ; in the county of Bullitt, six ; in the county of Campbell, twelve ; in the county of Clarke, ten ; in the county of Cumberland, seven ; in the county of Christian, ten ; in the county of Floyd, five ; in the county of Fleming, nine ; in the county of Fayette, fifteen ; in the county of Franklin, eight ; in the county of Garrard, ten ; in the county of Green, ten ; in the county of Gallatin, five ; in the county of Harrison, ten ; in the county of Henderson, eight ; in the county of Hardin, eight ; in the county of Henry, nine ; in the county of Jessamine, eight ; in the county of Jefferson, ten ; in the county of Knox, seven ; in the county of Livingston, ten ; in the county of Logan, twelve ; in the county of Lincoln, twelve ; in the county of Mason,

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fifteen ; in the county of Montgomery twelve ; in the county of Madison thirteen ; in the county of Mercer, thirteen ; in the county of Muhlenberg, eight ; in the county of Nicholas, seven ; in the county of Nelson, ten ; in the county of Ohio, eight ; in the county of Pendleton, eight ; in the county of Pulaski, seven ; in the county of Scott, ten ; in the county of Shelby, ten ; in the county of Washington, twelve ; in the county of Woodford, eight ; in the county of Warren, eight ; and in the county of Wayne, seven : *Provided however*, that if in any of the aforesaid counties, there shall be at present a greater number of justices of the peace than are here- in prescribed, no removal from office shall on that ac- count take place ; but when any vacancy shall occur in any such county, such vacancy shall not be filled by a new appointment, unless it be necessary to complete the number of justices hereby assigned to such county ; ex- cepting that it shall now, and at all times, be the duty of the county courts, without any reference to the above numbers, to nominate in each of the county towns, and in the town of Danville, or as convenient to each of said places as the nature of the case will admit, so many fit persons as may be necessary to keep up thereat the fol- lowing numbers of justices of the peace, to wit : Fay- ette, four, Mason, three, Bourbon, three, Franklin, three, Nelson, three, Danville, three ; and all the other coun- ty towns, two each.

1801.

Provido.

Exceptions.

This act shall commence and be in force from and af- ter the passage thereof.

To commence,

CHAPTER CCCLX.

An ACT directing the mode of Revising the Criminal Common Law, and providing for the appointment of Revisors.

Approved December 19, 1801.

WHEREAS it appears to the general assembly, that the criminal laws of this commonwealth are so complex in their present state, that it is impossible for the people who are governed by them, to read or understand them : for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the general assembly*, That two revisors shall be appointed by a joint vote of both houses, to methodize and revise it in the following man-

Revisors ap- pointed.

Their duty.

1801.

ner : they shall collect from the English reporters, and such other writers on the criminal law, as the revisors may think proper, whatever is applicable to the present existing criminal laws of this state, arranging the several crimes in the same order in which they are arranged in the acts of assembly ; that is to say, whatever respects murder, shall be collected to a single point of view, under the first head or article ; and so on of all other offences made penal by our laws.

Obsolete laws,
&c. to be omitted.

Sec. 2. *And be it further enacted,* That such parts of the English reporters upon the criminal law as have become obsolete, such parts as are contradictory or inapplicable to our laws, and such parts as are superfluous, from being too often repeated, shall be omitted.

No Latin or
French to be
used.

Sec. 3. *And be it further enacted,* That no abbreviations, nor any Latin or French phrases shall be used. And to the end that the citizens of this commonwealth may be enabled to judge of the accuracy with which the selections are made,

To transmit
their work to
the public printer.

Sec. 4. *Be it further enacted,* That the revisors shall from time to time, transmit to the public printer, so much of their work as may be completed, with marginal notes, referring to the several English reporters from which the compilation has been made, who may proceed to publish the same in his weekly paper ; and in case of his failure to do so, they shall transmit the same to some other printer in this commonwealth, until the whole is gone through.

The revision,
when approved,
only to be used
in trials.

Sec. 5. *And be it further enacted,* This revision, when made, shall be reported by the revisors to the legislature ; and if approved by them, shall be substituted in the place of the English reporters, as a commentary upon the criminal laws of this state. And all judges shall be enjoined by law not to suffer any thing to be quoted thereafter as authority in criminal trials, which has not previously been enacted by the legislature. The revisors shall receive in advance for their services, the sum of 300 dollars, to be divided between them, to be paid out of the public treasury of this state ; and the legislature before whom such revision shall be laid, shall judge what further appropriation shall be made, as a compensation to the revisors. And in case one or both of the revisors chosen as aforesaid, should fail to act, the governor is

Their compensation.

Governor to
supply vacancies.

hereby authorised to appoint a proper person or persons to fill the vacancy.

1801.

This act shall commence and be in force from and after the passage thereof.

To commence.

CHAPTER CCCLXI.

An ACT concerning the Jail and Penitentiary House.

Approved December 19, 1801.

SECTION 1. *BE it enacted by the general assembly,* That the inspectors to the jail and penitentiary house, shall in future be appointed by the governor annually ; and the governor for the time being, shall always be considered as an inspector in addition to the number now directed by law ; and when any vacancy may happen by the death, resignation or refusal to act, of any inspector, the governor shall fill such vacancy by the appointment of some other person. It shall and may be lawful for the governor and inspectors to make any regulations which to them, or a majority of them, may appear necessary for the internal government of the said jail and penitentiary house ; and shall have power to punish criminals who are committed to said jail and house, who may behave refractory ; in all cases wherein the keeper is not now by law permitted to punish : and the governor and inspectors shall annually appoint a physician to attend the sick in the said jail and penitentiary house ; and shall at every session, report to the general assembly, the amount of his account. And whereas from the increase of criminals in the said jail and penitentiary house, it is necessary that the keeper should have a clerk for the purpose of entering accounts of work done by the criminals : therefore,

Commissioners to be appointed.

Certain regulations to be made

Physician to be appointed.

Sec. 2. *Be it further enacted,* That there shall be allowed the said keeper, in addition to the salary now allowed him by law, the sum of fifty dollars, to enable him to employ a clerk as aforesaid ; and the said clerk shall also act as clerk to the inspectors.

Additional salary to the keeper.

This act shall be in force from its passage.

To commence.

1801.

CHAPTER CCCLXII.

An ACT to improve the Navigation of the Kentucky River.

Approved December 19, 1801.

Preamble.

WHEREAS the improving and extending the navigation of the Kentucky river, will be of great public advantage, and the general assembly being impressed with the importance of the object, is willing to encourage so useful an undertaking:

Shares to be
subscribed for.

Commissioners
appointed.

Form of sub-
scriptions.

Sec. 1. *Be it therefore enacted by the general assembly,* That it shall and may be lawful to open books for the purpose of receiving subscriptions of shares, in the county of Franklin, under the direction of Christopher Greenup, Bennett Pemberton and Thomas Todd; in the county of Woodford, under the direction of Robert Alexander, Thomas Bullock and William Steele; in the county of Fayette, under the direction of James Trotter, John Jordan and Thomas Wallace; in the county of Clarke, under the direction of David Bullock, Robert Clarke, jun. and Dillard Collins; in the county of Madison, under the direction of John Patrick, James Barnett and John Wilkinson; in the county of Garrard, under the direction of John Harrison, Thomas Kennedy and Abner Baker; in the county of Mercer, under the direction of Gabriel Slaughter, James Birney and James Moore; in the county of Jessamine, under the direction of William Price, George Walker and Benjamin Bradshaw; in the county of Scott, under the direction of William Henry, David Flournoy and Bartlett Collins: in the county of Lincoln, under the direction of Isaac Shelby, William Logan and William Whitley; which subscription shall begin in the following manner, to wit: "We, whose names are hereto subscribed, do promise to pay to the president and directors of the Kentucky River Company, the sum of fifty dollars for every share of stock in said company, set opposite to our respective names by us subscribed, in such manner and proportion, and at such times as shall be prescribed by law, or directed by the said president and directors and their successors, pursuant to the act for improving the navigation of the Kentucky river. Witness our hands:" which shall be plainly subscribed by every person becoming a share-holder, in person or by his legal attorney, with the date of the subscription prefixed, and duly witnessed.

Sec. 2. *And be it further enacted*, That the capital stock of the company herein to be incorporated, shall consist of ten thousand dollars, to be divided into shares of fifty dollars each : and for the greater convenience of the subscribers, the shares shall be subscribed for as follows : in the county of Franklin, twenty shares ; in the county of Woodford, twenty shares ; in the county of Fayette, thirty shares ; in the county of Clarke, fifteen shares ; in the county of Madison, twenty-two shares ; in the county of Garrard, eighteen shares ; in the county of Mercer, twenty-two shares ; in the county of Jessamine, fifteen shares ; in the county of Scott, twenty shares ; and in the county of Lincoln, eighteen shares. And that each subscriber at the time of subscribing, shall pay down to the commissioners for receiving his subscription, the sum of five dollars for each share of stock he shall subscribe for, otherwise his subscription shall be forfeited.

1801.

Capital stock.

Shares.

Sec. 3. *And be it further enacted*, That the said commissioners shall in every thirty days certify to each other the number of shares they may respectively receive, to enable them to know the state of the subscription : and so soon as seventy-five shares are subscribed for, the said commissioners, or any three of them, shall give notice at least four weeks in two of the public newspapers printed in different towns, for the share-holders to assemble at Lexington, to elect a president and seven directors, for conducting and managing the said company's business and concerns, for and during such time, not exceeding one year, as the said subscribers or a majority of them, shall think fit ; and in counting the votes at any general meeting of the company, each member shall be allowed one vote for every share as far as four shares, and one vote for every two shares above four, by him or her held at that time in the said company ; and any proprietor, by writing under his or her hand, executed before two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her at any general meeting.

Commissioners' duty.

President and directors to be chosen.

Votes, how given.

Sec. 4. *And be it further enacted*, That the president and directors so elected, shall within thirty days after they are elected, meet at Lexington and appoint a clerk and treasurer, subject to the direction and controul of the president and directors, and liable to be disqualified from

To convene at Lexington.

Clerk and treasurer to be chosen.

1801.

Provide.

Annual meet-
ings of the sub-
scribers to be
fixed.To report their
proceedings.Money to be
retained for re-
pairs.

acting as such, and others appointed in their stead, at the discretion of the said president and a majority of the directors. The treasurer shall pay no money but by order of the president and a majority of the directors : and the said president and directors shall have power, from time to time, to call on the commissioners for a list of the shares subscribed ; which shall be recorded in the company's books, and also for the money by them received on each share subscribed ; which shall be deposited in the hands of the treasurer, to be by him disbursed and paid out, as the said president and directors, or a majority of them, shall order and direct : *Provided always*, that the treasurer shall give bond in such penalty and with such security, as the said president and directors, or a majority of them, shall direct, for the true and faithful discharge of the trust reposed in him ; which bond shall be payable to the president and directors of the said company and their successors ; and on a breach of the conditions of said bond, the president and directors for the time being, or a majority of them, may prosecute a suit thereon in any court having jurisdiction thereof.

Sec. 5. *And be it further enacted*, That the subscribers, when assembled as aforesaid to elect a president and directors, shall fix on a day for the annual meeting of the subscribers : *Provided always*, that the presence of proprietors having fifty shares, shall be necessary to constitute a general meeting ; and that there be a general meeting of the proprietors, annually, on the day so fixed on, at such convenient place as shall from time to time be appointed by the said general meeting ; but if a sufficient number should not attend on that day, the proprietors who do attend, may adjourn from day to day, till a sufficient number shall attend ; to which meeting, the president and directors shall make a report, and render distinct and just accounts of all their proceedings ; and on finding them fairly and justly stated, the proprietors then present, or a majority of them, shall give a certificate thereof, a duplicate of which shall be entered on the company's books. And at such yearly meetings, after leaving in the hands of the treasurer, such sums as shall be judged necessary for repairs and contingent charges, an equal dividend of all the nett profits arising from the tolls hereby granted, shall be

made to and among all the proprietors of the said company, in proportion to their several shares. And upon any emergency in the interval between the said yearly meetings, the president and a majority of the directors may appoint a general meeting of the proprietors of said company, at such convenient place, giving at least one month's notice in some newspaper. 1801.
President may call a general meeting.

Sec. 6. *And be it further enacted,* That the president and directors, before they act as such, shall take an oath To take oath. or affirmation for the due execution of their office.

Sec. 7. *And be it further enacted,* That the said subscribers, their heirs or assigns, from and after their first meeting at Lexington, shall be, and they are hereby declared to be incorporated into a company, by the name of "The Kentucky River Company;" and may sue and be sued as such, and enjoy all the privileges incident to a corporation, and shall be capable of taking and holding as tenants in common, their capital stock, and increase and profits thereof, and also such lands and tenements as shall be necessary for carrying their plan into complete operation; and do and perform every other matter or thing which a corporation or body politic may lawfully do. Subscribers incorporated.

Sec. 8. *And be it further enacted,* That the said president and directors, and their successors, or a majority of them, shall have power and authority from time to time, to call on the share-holders to pay into the hands of the treasurer, such portion of their shares as may be wanted for carrying on the said work, and shall give notice in two newspapers of the proportion of the share that must be advanced, at least four weeks before it shall be directed to be paid. And in case any share-holder shall neglect or refuse to pay the said proportion within three months after the same so ordered and advertised as aforesaid, the president and directors, or a majority of them, may sell by auction, and convey to the purchaser, the share or shares of such proprietors so refusing or neglecting payment, giving at least one month's notice of the sale in two newspapers in this state: and after retaining the sum due and charges of sale out of the money produced thereby, they shall refund and pay the overplus, if any, to the former owner: and if such sale shall not produce the full sum directed to be advanced as aforesaid, with the incidental charges, the said presi- Shares, how paid.

1801. dent and directors, or a majority of them, may in the name of the company, sue for and recover the balance by action of debt, or on the case; and the said purchaser or purchasers shall be subject to the same rules and regulations as the original proprietors would have been.

River to be cleared, & how.

Sec. 9. *And be it further enacted*, That the president and directors, and their successors, or a majority of them assembled, shall immediately after their incorporation, proceed to examine and clear out all obstructions in the Kentucky river, from the mouth of the South fork to the mouth of said river; which they may judge will impede or obstruct the passage of boats, or shall be absolutely necessary to improve the navigation of said river; upon such terms, and in such manner as they shall think fit; and out of the money arising from the subscriptions, pay for the same. And for reimbursing the share-holders of the said Kentucky river company, for their great trouble and expence they must be at, in clearing out the obstructions that impede the navigation of the said river, and rendering the same safe from dangers and difficulties now experienced:

Tolls.

Sec. 10. *Be it further enacted*, That it shall and may be lawful for the said Kentucky river company to demand and take from each person who may navigate the same, the following tolls, to wit:—

For each boat (except ferry-boats) not more than fourteen feet wide and thirty feet long,	D. c.
For each boat not more than fourteen feet wide, and forty-five feet long,	4 00
For each boat not more than fourteen feet wide and sixty feet long,	5 00
And every foot over and above fourteen feet wide and sixty feet long,	6 00
For each keel-boat, perogue or canoe of burthen, for each foot in length, provided they carry more than 2000 weight,	0 9
For each hundred pipe or hogshead staves, or pipe or hogshead heading, if floated on a raft,	12 1-2
For each hundred feet of plank or scantling, if floated on a raft,	0 4
For each hundred cubit feet of other timber, if floated on a raft,	0 4
	12 1-2

Provided.

Provided, however, That no boat, perogue or canoe, loaded with coal, lime, iron, or other ore, or household

furniture, shall pay more than three-fourths of the above prices. *And be it further enacted*, That the said president and directors shall, from time to time, appoint such and so many persons as they may think proper, to collect and receive the tolls herein before mentioned ; and to make all needful and necessary rules and regulations for carrying the same into complete effect.

1801.

Collectors to
be appointed.

Sec. 11. *And be it further enacted*, That should any person or persons refuse to pay such tolls before the boat or boats, or other vessels, shall leave the landing where they shall take in their loading, if there should be a collector of the tolls at the place, if not, then to settle at the place first below where there may be one, it shall and may be lawful for the said collector to seize such boat and sell the same, or so much of the loading as may be sufficient to discharge the toll due thereon, and all expences and charges that may attend the same ; and should any force be offered by the person or persons so offending, or resistance, such person or persons shall forfeit their said boat or boats and cargoes, which shall also be sold at auction : and after paying the tolls and expences incurred to the collector who made the seizure, shall pay the balance into the public treasury : and for enabling the collector to seize such boat or boats, it shall and may be lawful for the collector to apply to some justice of the peace, and on making oath of such resistance, the said justice shall issue his warrant, authorising the said collector to summon a sufficient guard for seizing such boat or boats ; each of the said guards shall receive seventy-five cents, and the collector one dollar per day for his trouble, to be paid out of the sales of the boat or boats and cargoes : and should any person evade the payment of tolls as they shall pass the river, it shall and may be lawful for the said Kentucky river company to receive the same, and ten per cent. thereon, as damages, and the costs, before any tribunal having competent jurisdiction thereof.

Penalty for re-
fusing to pay
toll.

Proceedings
when force is
offered.

Or payment re-
fused.

Sec. 12. *And be it further enacted*, That there shall be two commissioners (not being a share-holder) appointed by the governor, one on each side of the Kentucky river, whose duty it shall be to examine the said river, after being first notified by the president and directors of said company, that they have removed all obstructions in said river, which impeded the navigation

Commissioners
to be appointed
to examine the
river and re-
port.

1861. of boats, and report to said president and directors, their opinion thereupon : and if the said commissioners shall be of opinion that the navigation of the said river is improved as is contemplated by this act, then the said company shall be entitled to demand and receive the toll herein before allowed to be demanded and received : the said commissioners shall continue in office during good behavior, and shall annually, in the months of July or August, examine the navigation of said river, and inform the president and directors of said company, what repairs, if any, is necessary ; and the said president and directors shall without delay, as soon as the water is low enough, proceed to make such repairs ; and in case of death or resignation of any of the said commissioners, the governor shall from time to time fill up such vacancy ; and they shall receive for their services, one dollar and fifty cents per day, for every day they are in service, to be paid by the said company.
- To examine the river annually. Sec. 13. *And be it further enacted*, That any person who shall, after the passage of this act, throw any obstructions in the Kentucky river, either by erecting fish-dams, falling trees, or otherwise, for every such offence, pay three dollars for every twenty-four hours such obstructions shall remain in said river, to be recovered by action of debt before any justice of the peace in the county where such offence shall be committed, for the use of the said company : *Provided, however*, that if at any time after twenty-five years from the passage of this act, the commonwealth of Kentucky shall refund to the said company, their capital stock, that then, and in that case, all the powers and privileges given to the said company by this act, shall cease and be void.
- Repairs to be made, State may purchase company & right after 20 years, To commence. This act shall be in force from the passage thereof.

CHAPTER CCCLXIII.

An ACT to amend an act entitled "an act for opening the Navigation of South and Stoner's Fork of Licking, and for other purposes."

Approved December 19, 1861.

SECTION 1. *BE it enacted by the general assembly*, That so much of any act or acts as requires the South and Stoner's fork of Licking to be kept open for navi-

gation higher up said stream than Smith's mill, in the county of Bourbon, about one half mile below the mouth of Strode's creek, is hereby repealed.

1801.

Sec. 2. *And be it further enacted*, That the further time of ten months shall be allowed to the owners of mills on the said stream, to complete their locks, any law to the contrary notwithstanding.

Sec. 3. *And be it further enacted*, That the further time of ten months shall be allowed to George M. Bendinger to repair and complete his lock and slope on Main Licking, any law to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXIV.

An ACT repealing so much of the act as enables the Governor to draw money out of the public treasury, to pay for Fuel.

Approved December 19, 1801.

BE it enacted by the general assembly, That so much of the act entitled "an act establishing an auditor's office of public accounts," passed in June, one thousand seven hundred and ninety-two, as authorises the governor to draw from the public treasury, money to pay for fuel for his own use, shall be, and the same is hereby repealed.

This act shall commence and be in force from and after the first day of August, in the year one thousand eight hundred and four.

CHAPTER CCCLXV.

An ACT prolonging the time of removing Certificates, which, through mistake, have been located on military or other prior claims.

Approved December 19, 1801.

WHEREAS it is represented to the present general assembly, that the law is about to expire giving further time to remove certificates which through mistake were located on military or other prior claims :

BE it therefore enacted, That the benefit and provisions of the second section of the act entitled "an

1801. act for granting relief to settlers south of Green river,²⁸
 passed December the 11th, 1800, be extended so as to
 operate and be in full force until the further direction
 of the legislature.

This act shall be in force from its passage.

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 CHAPTER CCCLXVI.

*An ACT for establishing sundry Inspections of Flour,
 Hemp and Tobacco.*

Approved December 19, 1801.

Inspection at	SECTION 1. <i>BE it enacted by the general assembly,</i> That an inspection of flour, hemp and tobacco, be es- tablished in the county of Warren, on the lands of John Cole, on the north side of Big Barren river, about four miles below the mouth of Beaver creek, to be called and
Cole's.	known by the name of Cole's ; also, an inspection of flour, hemp and tobacco, on the lands of Christopher Funkhouser, on the south side of Green river, in Logan
Funkhouser's.	county, to be called and known by the name of Funkhou- ser's inspection ; also, an inspection of flour, hemp and tobacco, in the county of Harrison, on the south fork of
Hays's.	Licking, on the upper side of the mouth of Gray's run, on the lands of James Hays, to be called and known by the name of Hays's inspection ; also, an inspection of flour
Beatty's.	to be established at the ware-house of Otho Beatty, in the town of Frankfort ; and that the same be consider- ed a part of Frankfort inspection ; also, an inspection of
West-Point.	flour, hemp and tobacco, at the town of West-Point, in the county of Hardin, to be called the West-Point in- spection ; also, an inspection of tobacco, on the lands of
Ellis's.	Israel Ellis, in the county of Pendleton, on Main Lick- ing river, to be called and known by the name of Ellis's ; also, an inspection of hemp, flour and tobacco, in Galla-
Prestonville.	tin county, at the town of Prestonville, on the lands of John Smith and Francis Preston, to be called and known by the name of Prestonville ; also, an inspection of
Campbell's and Stapp's.	flour, hemp and tobacco, on Cumberland river, on the lands of William Campbell and Gholston Stapp, to be called and known by the name of Campbell's and Stapp's
Garris's.	inspection ; also, an inspection of flour, hemp and to- bacco, on the lands of Benjamin Garris, at his mill, in the county of Muhlenberg, to be called Garris's inspec-

tion ; also, an inspection of flour, hemp and tobacco, on the lands of Jacob Hunsaker, at his mill in the said county of Muhlenberg, to be called Hunsaker's inspection ; also, an inspection of flour, hemp and tobacco, on the lands of Martin Hardin, at the mouth of Pleasant run, in the county of Washington, to be called and known by the name of Hardin's inspection ; also, an inspection of flour, hemp and tobacco, on Kentucky river, in Henry county, where the road crosses said river, leading from Henry court-house to the Big-Bone lick, on the lands of Robert Sullenger, to be called and known by the name of Sullenger's ; also, an inspection of hemp, flour and tobacco, on the lands of James White, at the mouth of the middle fork of Station-Camp creek, in the county of Madison, to be called and known by the name of White's ; also, an inspection of tobacco, hemp and flour, on the lands of Francis Coleman, on Cumberland river, at or near the mouth of Clay-Lick creek, in the county of Livingston, and to be called and known by the name of Coleman's ; also, an inspection of tobacco, hemp and flour, on the lands of David Miller, on Cumberland river, in Livingston county, at or near a place called Ritchy's landing, to be called and known by the name of Miller's ; also, an inspection of tobacco, hemp and flour, on the lands of Francis Flournoy, on Licking river, in Campbell county, to be called and known by the name of Flournoy's ; also, an inspection of tobacco, hemp and flour, on the lands of Benjamin Allen, on Main Licking river, in the county of Campbell, to be called and known by the name of Allen's ; under the like rules and regulations as is provided by law, in respect to other inspections of the like kind in this commonwealth. And whereas it is of great importance to this state, that the quality of every article of export be ascertained :

Sec. 2. *Be it further enacted*, That all inspectors of tobacco within this state, from and after the first day of June next, shall arrange all tobacco inspected by them, in two classes or qualities, to wit : all those of the first and best quality, shall be assigned to the first class ; and the second rate or quality, to the second class ; which classes as aforesaid, shall be by the inspectors distinctly marked upon the head of each hogshead under the number, and be plainly inserted in the margin of each note.

1801.

Hunsaker's.

Hardin's.

Sullenger's.

White's.

Coleman's.

Miller's.

Flournoy's.

Allen's.

How regulated.

Tobacco to be arranged in classes.

1801. All and every inspector who shall refuse or fail to class and mark every hogshead of tobacco as aforesaid, shall for every such offence, forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court having cognizance of the like sum ; one half to the person who shall sue for the same, and the other half to the commonwealth, where the same shall be prosecuted on behalf thereof.

Penalty for failing to class tobacco.
This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXVII.

An ACT concerning Towns in this Commonwealth.

Approved December 18, 1801.

See Vol. I, Chap. 269.

Forfeiture for want of improvements, abolished.
SECTION 1. *BE it enacted by the general assembly,* That so much of any law as respects the forfeiture of lots in any town in this commonwealth for the want of improvements, shall be, and the same is hereby repealed ; and no lots in any town shall be forfeited for not being improved agreeable to the requisitions of any former law, act or acts to the contrary in any wise notwithstanding : *Provided however,* that this act shall not be so construed as to effect any contract which exists between the proprietor or proprietors of any town, and the owner of lots therein : that no county court shall hereafter condemn more than two hundred acres of land for any town, any law to the contrary notwithstanding.

Certain contracts not to be affected.
Land to be condemned for a town.
SEC. 2. *And be it further enacted,* That the platt of the town of Winchester, as laid down by Thomas Scott, is hereby established, and the boundaries of lots in the said town shall remain the same as is surveyed by said Scott.

Platt of Winchester established.
Recital.
SEC. 3. And whereas it is represented, that in virtue and pursuance of an act of the general assembly, entitled " an act concerning the establishment of towns," passed the 19th December, 1796, an election of trustees was on the 17th August, 1801, holden in Middletown, in the county of Jefferson, at which sundry persons who were not tenants in fee of lots therein, but who were actually holders thereof and residing thereon, did vote, and the said trustees so elected, have acted as such ; and it is doubted whether they were duly and properly elected,

Election of trustees for Middletown confirmed.

and whether their acts are valid; for removing which doubts, *be it enacted*, that the election of trustees made as aforesaid, shall be; and the same is hereby legalized and confirmed.

1801.

Sec. 4. *And be it further enacted*, That the trustees of the several towns in this commonwealth, when the same may be proper, upon the purchasers of lots therein producing to them a receipt or receipts from the proprietor or proprietors for the purchase money, shall make to such purchaser or his assignee, a deed or deeds for the lots purchased.

Trustees of towns to make deeds in certain cases.

This act shall commence and be in force from and after the passage thereof. To commence,

CHAPTER CCCLXVIII.

An ACT to amend the act entitled "an act for settling and improving the Vacant Lands of this Commonwealth."

Approved December 19, 1801.

See the prelection to Chap: 220, of Vol. I.

WHEREAS the act passed at the last session of the general assembly of this commonwealth, for settling and improving the vacant lands of this commonwealth, hath in many respects been found impolitic and unjust:

Preamble.

Sec. 1. *BE it therefore enacted by the general assembly*, That where two hundred acres of land, or any less quantity, as the case may be, may have been located by a person holding and actually residing upon two hundred acres, or a less quantity, obtained under any former law granting lands to settlers south of Green river, he, she, or they, shall not hereafter be obliged to settle and reside upon the lands so located; but shall have the same privileges and right, as those who locate, settle and reside upon four hundred acres: *Provided*, that no settlement hereafter made, shall interfere or affect any claim as aforesaid, on account of the same not being settled on before the granting such claim.

Settlements on, in certain cases dispensed with.

Proviso.

Sec. 2. *And be it further enacted*, That the eighth section of the above recited act, is hereby repealed, except so much as relates to salt licks and salt springs; and two years from the passage of this law, be allowed all persons who have or may obtain certificates by virtue

Part of former law repealed, with an exception, and further time to obtain warrants.

1801.

Certain lands
not relinquished

of the said act, to obtain warrants in the manner there-
in directed, on their paying five per cent. interest per
annum, from the time the money became due, or here-
after becomes due, agreeable to said act.

Sec. 3. *And be it further enacted,* That persons who
have actually obtained certificates for lands under the
authority of any law for granting lands to settlers south
of Green river, and who have located the same, shall
not be at liberty to relinquish the same, and locate and
hold it under the above recited act.

Lands when to
be surveyed and
patented.

Sec. 4. *And be it further enacted,* That as soon as any
person shall have obtained his warrant as aforesaid, he
may proceed immediately thereafter to survey the land
so appropriated; and the patent shall issue, and the
land be completely vested without further limitation.

Certain claims
not to be affec-
ted.

Sec. 5. *And be it further enacted,* That no claims
granted under any law passed prior to the year 1800,
for granting relief to settlers south of Green river, where
the same is surveyed and a plat and certificate thereof
returned to the register's office, shall be affected by any
claim originated under the act entitled "an act for set-
tling and improving the vacant lands of this common-
wealth," or any law that may be hereafter passed. And
for receiving, recording, and a copy of any certificate
granted to any settler on vacant lands, the clerks shall
receive twenty-five cents, and no more; and all persons
who have obtained or may hereafter obtain a certificate
for any vacant land within this commonwealth, shall en-
ter the said land with the commissioner of the tax, and
pay taxes thereon in the same manner with lands held by
patent.

Clerks' allow-
ance.

Lands obtained
to be for pay-
ment of taxes.

To commence.

This act shall commence and be in force from and af-
ter the passage thereof.

CHAPTER CCCLXIX.

*An ACT providing a mode of rectifying Mistakes in ma-
king certain Surveys."*

Approved December 19, 1801.

WHEREAS it is represented to the present general
assembly, that doubts have arisen among the good peo-
ple of this commonwealth, whether surveys made under
the authority of the same, are governed by the laws of

the former government now in force in this state, so far as to the rectifying of mistakes : therefore,

1801.

BE it enacted by the general assembly, That in all cases where surveys are now, or may hereafter be made by any act of this commonwealth, so far as to rectifying mistakes, shall be governed by the act of the Virginia legislature, entitled "an act for adjusting and settling the claims to unappropriated lands under the former and present government, previous to the establishment of the commonwealth's land office."

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXX.

An ACT for adding part of Lincoln County to the County of Garrard.

Approved December 19, 1801.

SECTION 1. *BE it enacted by the general assembly,* That all of that part of the county of Lincoln, to wit : beginning at the mouth of White-Oak creek ; thence a straight line to the Fall lick, leaving Thomas Owsley in Lincoln county ; thence up Fall lick to the Lincoln line, shall be, and the same is hereby added to and made part of the said county of Garrard.

Sec. 2. *And be it further enacted,* That the sheriff of Lincoln is hereby directed and empowered to collect and make distress for all public dues and officers' fees which shall remain due and unpaid by the inhabitants hereby added to the county of Garrard as aforesaid, at the time such division shall take place : and the court of the said county of Lincoln shall have jurisdiction in all cases, either in law or equity, which shall then be depending before them, to issue process and award execution thereon.

This act shall commence and be in force from and after the passage thereof.

1801.

CHAPTER CCCLXXI.

An ACT to amend an act entitled "an act to amend and reduce into one, the several acts establishing a Permanent Revenue."

Approved December 19, 1801.

See the preface to Chap. 10, Vol. I.

SECTION 1. *BE it enacted by the general assembly,*
That hereafter first rate land shall be taxed at fifty cents,
second rate land at thirty-four cents, and third rate land
at twelve and a half cents for every hundred acres ; for
every horse, mare, colt or mule, four cents ; and for
every covering horse, the sum for which such horse co-
vers one mare the season, which rate or sum the owner
shall note down when he delivers in his list of property
to the commissioner ; and the sheriffs of this common-
wealth shall be governed by this act, in the collection of
taxes for the year one thousand eight hundred and one,
to be collected in the year one thousand eight hundred
and two.

This act is to
be pursued in
the collection
for 1801.

No commis-
sioner to serve
as sheriff for a
certain time.

Sec. 2. No person who shall hereafter serve as a commis-
sioner of the tax, shall be capable of holding the office of
sheriff, either as a principal or deputy, for and during
the term of twelve months, from and after he shall have
acted as commissioner.

How improper
charges recti-
fied.

Sec. 3. When any person shall be, or have hereto-
fore been improperly charged with any levy or tax, on
making due proof thereof to the court of his county, such
court shall have power to correct such error or rectify
such improper charge, a certificate of which shall be
granted by the clerk to such person, which shall be received
by the sheriff ; the amount of which shall be credited in
case of a county levy by the commissioners appointed
by the court to settle with such sheriff, and in case of
revenue tax, by the auditor.

Owner to pay
the expenses of
advertising his
land.

Sec. 4. In all cases where the owner or owners of any
tract or tracts of land in this state, shall fail to pay the
tax due thereon, and in consequence of such failure,
the register shall cause the said land to be advertised in
the public papers, the owner or owners shall be charge d
with the expence thereof ; and in case any such owner,
his agent or attorney, shall pay his taxes after the time
the auditor shall have transmitted the list of delinquents
to the register, and before such land shall be sold, he

shall obtain a certificate from the register, stating the amount of the tax, interest, and the expence of advertising, due from him ; which certificate shall be by the treasurer filed in his office, the amount thereof being paid, and the treasurer's receipt shall be returned to the register, who upon receiving the same, shall give a *quæctus* to the person producing such receipt, and the amount thereof shall be credited to him in his settlement with the auditor ; and in case it shall not appear to the register, by the receipt of the treasurer thus produced, that the amount due on any land is paid before the time he is directed by law to sell the same, he shall proceed, on the first Monday in November annually, to sell so much thereof as shall be sufficient to pay the tax and interest due thereon, and also the expence of advertising ; for which purpose, it shall be the duty of the register to ascertain from the printer, the expence on one line in the list of non-residents' lands advertised, when proportioned to the whole expence of advertising, and shall charge each person with the expence agreeable to the number of lines it shall require to contain their respective lands, without respect to the quantity of land contained in each tract ; and the register shall hereafter be allowed at the rate of four and a half per centum, and no more, on all monies he shall receive for lands thus sold for taxes ; after deducting which allowance, he shall weekly pay into the treasury the balance of all such taxes remaining in his hands, and take the treasurer's receipt for the same, which receipt shall be lodged with the auditor, and obtain his receipt therefor ; and it shall be the duty of the register, when any tract of land is exposed for sale, and the purchaser shall refuse or neglect to pay up the money, immediately to expose the same to sale again : and where any person being a resident, shall have purchased lands which are entered with the auditor, in the name of a non-resident, or where a non-resident shall become a resident of this state, and shall have entered such land with the commissioner of the county where such person resides, it shall be the duty of the auditor, on its appearing to his satisfaction from the commissioners' books, or otherwise, that such lands are so entered, to discontinue such entry in his books.

1801.

Certain lands
to be sold by
the register.

How expence
of advertising is
to be ascertain-
ed.

Register's al-
lowance.

When he is to
account.

When purcha-
ser neglects to
pay for land.

When entries
with the audi-
tor to be dif-
continued.

Sec. 5. Any person (infants and persons *non compos mentis* excepted) claiming lands in this state, and failing to be forfeited.

Lands not listed
to be forfeited.

1801. to list the same for taxation, in the case of a resident whenever legally called on by a commissioner of the tax, and in the case of a non-resident, with the auditor on or before the first day of October next, shall for, and in consequence of such failure, forfeit his or her claim to this commonwealth : *Provided however*, that such forfeiture shall not affect or invalidate the title of any other person or persons who may have a legal and different claim to the same land, who shall list and pay the tax due thereon, agreeable to law ; but the claim or title of such person or persons, shall be, and remain as valid and secure, as if the claim which has been forfeited in consequence of the land not being listed, had never existed : *Provided also*, that the non-residents who have already listed their lands with the auditor in pursuance of the revenue laws heretofore in force, shall not incur any forfeiture for failing again to list the same, agreeable to the requisitions of this act : and provided also, that such person, so failing to list his lands aforesaid, shall, within two years after such omission to list, be entitled to redeem the said forfeiture, by listing such land with the auditor or commissioner, as the case may be, and rendering an account of the years for which the tax is due on the same, who are hereby severally authorised to receive the same, and by paying the tax and arrears of tax due on the said land, in the same manner as if entered with the commissioner when applied to, or with the auditor, on or before the said first day of October, with an addition of ten per centum per annum, on the same, due for the time of such omission ; and the auditor and commissioner in taking such list, are hereby directed to take an account of the years for which the tax is due on the said land ; and in case such person having omitted to list as aforesaid, shall list his land as is herein lastly directed, within two years, he shall hold and possess his said land, free from the claim of this commonwealth, or of any person, from such omission, and in the same manner as if no such omission had taken place.
- Forfeiture not to affect claims of others.* *Provido.* *Lands, how to be redeemed.*
- Sec. 6. All persons who have purchased or may hereafter purchase lands at the sales of lands for the non-payment of taxes, whether they shall have received deeds of conveyance for the same, or not, shall enter and pay the taxes that have accrued or may accrue on the said land, in the same manner with lands held by deed or patent.
- Lands entered for the payment of taxes in certain cases.*

This act shall commence and be in force from and after the passage thereof.

1801.

CHAPTER CCCLXXII.

An ACT regulating the appointment of Sheriffs:

Approved December 19, 1801.

See the prælection to Cap. 16, Vol. I.

SECTION 1. *BE it enacted by the general assembly,* That if any person who has been, or may hereafter be appointed sheriff in any county within this commonwealth, agreeable to the provisions of the constitution, shall have refused, or may refuse to act as such, or the office of sheriff may become vacant by death, resignation, or otherwise, the governor shall, by and with the advice and consent of the senate, during their session, or in the recess, appoint some other person qualified in said county, to fill such vacancy.

Sec. 2. *And be it further enacted,* That the person so appointed to fill such vacancy, shall hold his office of sheriff, and perform the duties thereof, until the end of the term for which the person was recommended or appointed, by whose death, resignation or removal, the office may have become vacant.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXXIII.

An ACT to alter and amend the act entitled "an act establishing County Courts, and regulating the jurisdiction of Justices of the Peace."

Approved December 19, 1801.

See the prælection to Chap. 23, Vol. I.

WHEREAS it is represented to the present general assembly, that doubts have arisen with respect to appeals from the judgments of a justice of the peace, to the county courts; and in order to remove the same, Preamble.

Sec. 1. *Be it enacted by the general assembly,* That in future no interest or costs given by the judgment of a justice of the peace shall be considered as entitling the defendant to an appeal; and that all judgments given by a justice of the peace for sums of less value than Appeals in certain cases regulated.

1801. twenty-five shillings, exclusive of interest or costs, shall be final, and not subject to an appeal.

Executions may
issue to any
county.

Sec. 2. *Be it further enacted*, That any justice of the peace may issue an execution, directed to the constable in any other county to which the debtor may have removed with his property; and such constable shall execute and return the same, in the same manner as if it had been issued by a justice of the peace within his county.

Replevies re-
gulated.

Sec. 3. *Be it further enacted*, That on all judgments hereafter obtained for any sum above twenty-five shillings, and under five pounds, the defendant or debtor may have the benefit of a replevy, as in cases above that sum. The county court shall have power to remove from office any constable who shall be charged with a misdemeanor in office; provided that a majority of all the justices of said court shall concur in such removal; and provided also, that the said constable have ten days previous notice of the exhibiting such charge. Justices of the peace shall hereafter take rank as county court magistrates, from the dates of their commissions; and where more than one is contained in the same commission, they shall take rank in the order they stand in the commission.

How constables
removed from
office.

Seniority of
justices regula-
ted.

To commence.

This act shall commence and be in force from the passage thereof.

CHAPTER CCCLXXIV.

An ACT to amend the act entitled "an act for the better regulation of the Town of Paris, and vesting the Trustees with additional powers."

Approved December 19, 1801.

WHEREAS it is represented to the general assembly, that the act for the better regulating the town of Paris, and vesting the trustees with additional powers, is unequal and unjust: therefore,

Sec. 1. *Be it enacted*, That the trustees of the said town, shall, from and after the passage of this act, have full power and authority to levy and collect of and upon the citizens of the said town of Paris, annually, the sum of twenty five pounds, and no more, in the same manner, and to be applied to the same uses as the tax under the before recited act was directed to be levied and applied.

X. YEAR OF THE COMMONWEALTH.

437.

Sec. 2. *And be it further enacted*, That so much of the said recited act as directs the sum of sixty pounds to be levied upon the citizens of the said town of Paris, shall be, and the same is hereby repealed. 1801.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXXV.

An ACT to amend an act entitled "an act to amend the Penal Laws of this Commonwealth."

Approved December 19, 1801.

See Chap. 4, of this Vol.

SECTION 1. *BE it enacted by the general assembly*, Murder, what.
That any person, his or her aiders, abettors or counselors, who shall be guilty of murder, and shall perpetrate the same by means of poison, or by laying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or who shall commit the same in the perpetration, or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed a felon; and every other kind or species of killing, which shall be committed with malice aforethought, either express or implied, shall be deemed felony, and shall be punished with death. Every person or persons who shall strike, stab, thrust, or shoot any person or persons, the party which shall so strike, stab, thrust, or shoot, so that the person stricken, stabbed, thrust, or shot, shall die thereby within six months next following, although the same be done without malice aforethought, yet shall the party so offending, and being legally thereof convicted, undergo a confinement in the jail and penitentiary house, for a period not less than six months, nor more than six years: How punished.
Provided always, That this act, or any thing therein contained, shall not extend to any person or persons who shall kill another in self-defence, or by misfortune or accident; nor shall extend to any other person or persons, who, in keeping or preserving the peace, shall chance to commit manslaughter, so as the said manslaughter be not committed wittingly, wilfully, and of purpose, under pretext and colour of keeping the peace. Striking, stabbing, &c.
How punished.
Provide.

Sec. 2. If any woman, not being a slave, be delivered of any issue of her body, which being born alive, would by law be a bastard, and shall endeavor privately, either Punishment for concealing the death of bastard children.

1801.

by drowning or secret burying thereof, or any other way, either by herself or procuring of others, to conceal the death thereof, so that it may not come to light, whether it were born alive or not, but be concealed; in every such case, the mother so offending, being thereof lawfully convicted, shall be deemed a felon, and sentenced to undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor more than seven years.

For maiming.

Sec. 3. Whosoever shall unlawfully pull or put out an eye, cut or bite off or slit a nose, ear or lip, or any part thereof, or cut or bite off any other limb or member, by fighting or otherwise, except in self-defence; every such offender, his or her aiders, abettors and counsellors, upon conviction thereof, shall be sentenced to undergo a confinement in the jail and penitentiary house, for any term not less than six months, nor more than five years.

For stealing or
selling a free
person as a slave

Sec. 4. Any person or persons who shall be hereafter guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, or his or their aiders, abettors or counsellors, and who thereof shall be lawfully convicted; the person so convicted, shall be sentenced to undergo a confinement in the jail and penitentiary house, for any time not less than five years, nor more than ten years.

For polygamy.

Sec. 5. Whosoever being married, shall, the first husband or wife (as the case may be) being alive, marry any person or persons, shall, being thereof lawfully convicted, undergo a confinement in the jail and penitentiary house, for a period not less than three years, nor more than nine years: *Provided*, that nothing herein contained shall extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself, the one from the other, by the space of seven years together, in any part within the United States of America, or elsewhere, the one of them not knowing the other to be living within that time: *Provided also*, that nothing herein contained shall extend to any person or persons that shall be at the time of such marriage divorced by lawful authority, or to any person or persons where the former marriage hath been, or hereafter shall be, by lawful authority declared to be void and of no effect, nor to any

Exceptions.

person or persons for or by reason of any marriage had or made, or hereafter to be had or made within age of consent.

1801.

Sec. 6. If such offender be a man, his first wife shall, on his conviction, be forthwith endowed of one-third part of his real estate, which she shall hold as tenant in dower, the assignment of which shall be made as prescribed by law in other cases of dower, and she shall have the like remedy for the recovery thereof; and she shall also, on his conviction, be forthwith entitled to one-third part of his personal estate, in the same manner as if such offender had died intestate, and she had survived him; which third part of his personal estate shall be divided and allotted to her by order of the county court in which such offender last resided, in the same manner as distribution is made of the personal estate of intestates: and the said county court shall have power and authority to direct such division and allotment to be made. And if the said offender be a woman, she shall, on conviction, forfeit her claim to dower of the estate of her first husband, and also her distributory share of his personal estate, which she would be entitled to if he had died intestate, and she survived him.

Provisions for
the wife in po-
ligamy.

In case of a
woman, she for-
feits dower, &c.

Sec. 7. Any man from henceforth who shall carnally and unlawfully know any woman against her will or consent, and all persons who are accessory thereto before the fact, shall be deemed guilty of felony; and upon due conviction thereof, shall undergo a confinement in the jail and penitentiary house, for a period of not less than ten years, nor more than twenty-one years.

Punishment of
rape.

Sec. 8. If any person shall carnally know and abuse any woman child, under the age of ten years, every such carnal knowledge shall be felony; and the offender being convicted thereof, shall undergo a confinement in the jail and penitentiary house, for a period not less than ten years, nor more than twenty-one years.

For abusing a
woman child
under ten years
of age.

Sec. 9. Whereas women, as well maidens as widows and wives, having substance, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors; for the lucre of such substance, have been often times taken by misdoers, contrary to their will, and afterwards married to such misdoers, or to others by their consent, or defiled: *Be it therefore enacted*, that whatsoever person or persons

Recital.

Punishment for
abduction of
women.

1801.

shall take any woman so against her will unlawfully, such taking, and the procuring and abetting the same, and also the receiving wittingly the same woman so taken against her will, shall be felony; and such misdoers, takers and procurers to the same, and receivers, knowing the offence in form aforesaid, being duly convicted thereof, shall undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor more than seven years: *Provided always*, that this act shall not extend to any person taking away any woman, shewing reasonable claim to her as his ward or bond woman.

For the abduction of children.

Sec. 10. If any person above the age of fourteen years, shall unlawfully take or convey away, or shall cause to be taken or conveyed away, any woman child, unmarried, being within the age of fourteen years, out or from the possession, and against the will of the father or mother of such woman child, or out of, or from the possession, and against the will of such person or persons as then shall have, or by any lawful way or means hath the keeping, education or governance of any such woman child, and being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, a period not less than six months, nor more than five years.

Punishment of arson of court-houses, prisons, &c.

Sec. 11. If any person shall wilfully burn any court-house, or county or public prison, or the office of the clerk of any court within this commonwealth, or the capitol of this commonwealth, or any public office contained therein, or any surveyor's office of this commonwealth, or the supervisor's office in this state, or any public office in this state of any kind whatever; such person or persons, and his, her or their aiders, abettors or counsellors, or either of them, being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, for a period of not less than seven years, nor more than twenty-one years.

Arson of tobacco-houses, &c.

Sec. 12. All and every person or persons that shall intentionally and unlawfully burn any tobacco-house, ware-house, or store-house, or any house or place where wheat, Indian corn, or other grain shall be kept, or any other house or houses whatsoever, or any stack of hay, fodder, flax, hemp, tan-bark, wheat, or other grain, or shall comfort, aid, abet, assist, counsel, hire or com-

mand any person or persons to commit any of the said offences, being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than six months, nor more than six years.

1801.

Sec. 13. All and every person or persons that shall, at any time in the night or day, feloniously break any ware-house or store-house, and shall take therefrom any money, goods or chattels, wares or merchandize, of the value of four dollars lawful money, or more, although the owner of such goods, or any other person or persons be, or be not in such ware-house or store-house, or shall aid, assist, counsel, hire or command, any person or persons, so to break and rob any such ware-house or store-house, and being thereof lawfully convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than seven years.

Breaking and
robbing ware-
houses or store-
houses.

Sec. 14. If any person or persons shall feloniously take any goods or chattels out of any church, chapel or meeting-house, belonging thereto, or shall rob any person or persons in their dwelling-houses, or dwelling-places; the owner or dweller in the said house, or dwelling-house, or dwelling place, his wife, children or servants, then being within, and put in fear or dread by the same; or shall feloniously break any dwelling-house by day, and take away any goods or chattels, being in any dwelling-house, the owner, or any person being therein, and put in fear; such offender, his, her, or their aiders, counselors, or abettors, being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than seven years.

Larceny from a
church, &c.

Sec. 15. If any person or persons shall rob any person or persons in any booth or tent, in any fair or market, the owner, his wife, his children or servants, then being within the same booth or tent, or shall aid, assist or abet any person committing such offence, he, she or they, being thereof lawfully convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than five years.

Larceny from a
booth or tent,
&c.

Sec. 16. If any person or persons shall steal any negro, mulatto or Indian slave whatsoever, out of, or from the possession of the owner or owners of such slave, the person or persons so offending, and all accessories to

Larceny of a
slave.

1801.



such offence, being thereof lawfully convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor more than nine years.

Hog stealing.

Proviso.

Sec. 17. Any person or persons who shall be guilty of stealing any hog, shoat or pig, shall, upon conviction, be fined and imprisoned at the discretion of a jury; *Provided*, such imprisonment shall not exceed twelve months, nor fine exceed ten pounds. And any person who shall be convicted a second time of stealing any hog, shoat or pig, as aforesaid, every such person shall undergo a confinement in the jail and penitentiary house, for a period not less than six months, nor more than three years.

Receiving of stolen goods.

Sec. 18. Whosoever shall receive any stolen goods or chattels, knowing the same to be stolen, being thereof convicted, shall restore the goods or chattels so stolen and received, to the owner or owners thereof, or make restitution to the value of the whole, or such part as shall not be restored, and shall undergo a confinement in the jail and penitentiary house, for a period not less than six months, nor more than three years: and such receiver may be prosecuted and punished, although the principal offender has not been convicted.

Forgery of inspector's receipts, &c.

Sec. 19. Any person or persons who shall forge or counterfeit, alter or erase the stamp or receipt of any inspector or inspectors; or shall cause or procure such stamp or receipt to be forged or counterfeited, altered or erased; or shall aid or assist in forging or counterfeiting, altering or erasing such stamp or receipt; or shall pass or tender any such stamp or receipt in payment or exchange, knowing the same to have been forged or counterfeited, altered or erased; or shall have in his or her custody or possession, any inspector's stamp or receipt which hath been altered or erased, knowing the same to be altered or erased, and shall not discover such altered or erased stamp or receipt to two justices of the peace, within five days after they or either of them shall have come to his or her possession; or shall export, or cause to be exported, any hogshead or cask of tobacco or flour stamped with a forged or counterfeit stamp; or shall receive or demand any tobacco or flour of any inspector, upon any forged or counterfeited, altered or erased stamp or receipt, knowing such stamp or receipt to be forged, counterfeited, altered or erased; or shall put or pack, or

Or having in possession a forged stamp,

and not discovering it to two justices;

or exporting any tobacco or flour on such forged stamps.

cause to be put or packed into a hogshead or cask stamped by any inspector, any tobacco or flour whatsoever; or shall draw or take out, or cause or procure to be drawn or taken out, any staves, plank or heading board of any hogshead or cask of tobacco or flour, so stamped as aforesaid, after the same shall be delivered out of any public ware-house; shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than six years.

1801.

Or drawing or taking out heading after delivery.

How punished.

Sec. 20. If any inspector or inspectors shall give, deliver or issue to any person whatsoever, his or their receipt, expressed to be for any hogshead or cask of tobacco or flour, or for any quantity of hemp or transfer tobacco, which they have not actually received into the ware-house whereof they are inspectors, at the time of giving such receipt; or shall give, deliver, issue, or cause or procure to be given, delivered or issued, more than one receipt for any hogshead or cask of tobacco or flour, or quantity of transfer tobacco, by him or them received, except when authorised by law so to do; such inspector or inspectors, being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than seven years.

Inspectors giving receipts for tobacco or flour not delivered.

Sec. 21. If any skipper of any boat or vessel, or the person or persons to whom the care and management thereof shall be intrusted, shall land or put on shore any hogshead, cask or package of tobacco or flour, put on board the same to be carried to any public ware-house, or any other place or places than the ware-houses appointed, or which shall be appointed by law, for the reception and inspection of tobacco and flour, or at some or one of them, or other landing to such ware-house or ware-houses belonging; or shall put the same on board any other vessel, or suffer the same to be done, so as the same be not delivered at some of the said public ware-houses, without fraud or embezzlement; or shall open any hogshead or cask of tobacco or flour so as aforesaid water-borne, and land and take thereout any tobacco or flour, before the same be received by the inspectors according to law; or after the same has been received, shall fraudulently open any hogshead or cask, and take thereout any tobacco or flour; every such offender or offenders shall undergo a confinement in the jail and peni-

Skippers of boats, &c. for landing any tobacco or flour, &c.

Or opening any tobacco or flour.

How punished.

1801.

tentary house, for a period not less than one year, nor more than five years. *Provided always*, that nothing herein contained shall be construed to prohibit the landing or putting on shore any hogshead, cask or package of tobacco or flour, out of any boat or vessel which by stress of weather shall be forced on ground, or become leaking, so as such landing be really and *bona fide* for the preservation of the tobacco or flour laden in such vessel; and that the same may, with all convenient speed, be thereafter carried to the ware-house or ship, as the case may be, to which it was designed, without embezzlement.

Forgery of
deeds, wills,
bonds, &c.

Sec. 22. *Be it enacted by the general assembly*, That if any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly act or assist in the false making, forging or counterfeiting any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, or any acquittance or receipt, either for money or property, with intention to defraud any person whatsoever; or shall utter or publish as true, any false, forged or counterfeited deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, endorsement or assignment of any bond, writing obligatory, bill of exchange, acquittance or receipt for money or property; or shall alter, forge or counterfeit any commission, patent, pardon; or forge, counterfeit or alter any auditor's warrants, certificates, or other public security, whereby money may be drawn from the treasury of this state; or shall be concerned in printing, writing, signing or passing any such forged, counterfeited, altered warrant, certificate or public security, knowing it to be such, with intention to defraud any person or persons, knowing the same to be false, forged or counterfeited; then every person thereof being lawfully convicted, shall be sentenced to undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor more than ten years.

How punished.

Forgery of the
seal of the land-
office, &c.

Sec. 23. He or she who shall falsely make or counterfeit, or aid, abet or assist in falsely making or counterfeiting any instrument, stamping an impression in the figure and likeness of the seal officially used by the register of the land office; or for counterfeiting the seal

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of this commonwealth, or the seal of any court or corporation within the same; or who shall have in his or her possession or custody such instrument, and shall wilfully conceal the same, knowing it to be falsely made or counterfeited; shall, being thereof duly convicted, undergo a confinement in the jail and penitentiary house, for a period not less than five years, nor more than fifteen years.

1801.

How punished.

Sec. 24. All and every person or persons, who shall unlawfully and corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever, now depending, or which may hereafter be depending in suit or variance, by any writ, action, bill, complaint, or information, in anywise touching or concerning any lands, tenements, hereditaments, or any goods, chattels, debts, or damages, in any of the courts of this commonwealth; or shall unlawfully and corruptly procure and *subpoena* any witness or witnesses, who shall be sworn to perpetuate testimony, or who shall be sworn in any criminal prosecution, or in any examination or controversy before a justice of the peace, or before any commissioners appointed to take depositions, or any other person authorised to administer an oath upon a question then legally depending before them; then every such offender or offenders shall, for his, her, or their said offence, being thereof lawfully convicted, suffer a confinement in the jail and penitentiary house, for a period not less than two years, nor more than seven years.

Subornation of perjury.

How punished.

Sec. 25. If any person or persons, either by subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent, or agreement, wilfully and corruptly commit any manner of wilful perjury, by his or their deposition or testimony, in any of the courts of this commonwealth, or before any justice of the peace, or before any commissioners appointed to take depositions, or before any person authorised to administer an oath upon a question then legally depending before them, or being examined to perpetuate testimony; then every person or persons so offending, and being thereof duly convicted, shall, for his or their said offence, undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor

Perjury.

How punished.

1801. more than seven years. And the oath of such person or persons so offending in any of the cases of perjury or subornation of perjury in this act mentioned, from thenceforth shall not be received in any court within this commonwealth, until such judgment against such person or persons shall be reversed.

Their testimony never after to be received.
Embezzling records, &c.
How punished.
 Sec. 26. If any record, or parcel of the record, writ, return, pannel, process, or a warrant of attorney, in any court within this commonwealth, be willingly stolen, taken away, withdrawn, or avoided by any person; such stealer, withdrawer, avoider, their procurers, counselors, or abettors, being thereof lawfully convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than two years, nor more than ten years.

Embracery.
How punished.
 Sec. 27. Every embracer who shall procure any juror to take gain or profit for rendering his verdict upon conviction; and every juror convicted of taking gain or profit for giving his verdict; shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than six years: and every such person shall be disqualified to serve on juries forever thereafter.

Selling a vote for any office.
How punished.
 Sec. 28. If any person or persons shall take any money, fee or reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for a vote, in appointing to any office or offices, to the intent that any person should have, exercise or enjoy any office or offices, or any part or parcel of them, which office or offices, or any part or parcel of them, shall in anywise touch or concern the administration of the executive government, or the administration or execution of justice, the receipt or payment of the public revenue, or which shall concern or touch any clerkship in any court of record; all and every person so offending, shall be incapable of voting for the appointment to any such office, and shall be adjudged a disabled person in law to all intents and purposes, to have, occupy or enjoy the said office or offices, in virtue of which he holds the right of appointing or voting for the appointment to such office; and shall moreover be amerced and imprisoned, at the discretion of a jury; and if a member of either house of assembly, he shall be expelled from the same,

And if a member of assembly, expelled.

and forever after be disabled from being elected a member of the general assembly.

1801.

Sec. 29. Every person who shall directly or indirectly, give or pay any money, fee or reward, or shall make any promise, agreement, bond or assurance to give any money, fee or reward whatsoever, for any vote or appointment to any office which concerns the administration of the executive government, or the administration or execution of justice, or the receipt or payment of the public revenue, or for the clerkship of any court of record, shall be utterly incapable of serving in any such office. And every such bargain, sale, promise, bond, covenant, agreement and assurance, as before specified, shall be utterly void and of no effect: *Provided always*, that if any person or persons shall be convicted of having offended against this act, yet all judgments given, and all other acts executed or done by any such person or persons so offending, by authority or colour of the office which ought to be forfeited, or not occupied or not enjoyed by the person so convicted, after the offence by such person committed or done, and before such person so offending for the same offence, be removed from the exercise, administration and occupation of the said office, shall be good and sufficient in law, to all intents and purposes.

Buying offices.

Agreement
void, &c.

Provido.

Sec. 30. If any person shall make or assist in making a hole in any vessel in distress, or stealing any pump materials, or goods, or shall be aiding in stealing such pump materials or goods, or shall wilfully do any thing tending to the immediate loss of such vessel, such person being thereof duly convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than one year, nor more than seven years.

Larceny from a
vessel.

How punished.

Sec. 31. No informer or plaintiff, upon a penal act, shall or may compound or agree with any person or persons that shall offend, or shall be surmised to have offended against any penal statute, for such offence committed, or pretended to be committed; but after answer made in court unto the information, or suit in that behalf exhibited or prosecuted, nor after answer, but by the order or consent of the court in which the same information or suit shall be depending: and he or they offending herein, being thereof lawfully convicted, shall stand in the pillory two hours; and shall also forfeit, for

Compounding
penal actions.

How punished.

1801. every such offence, five pounds ; the one half to the commonwealth, the other half to the party suing for the same, to be recovered in any court of record, by action of debt.

Riots, routs,
&c.

How punished,
and the proceed-
ings thereon.

Sec. 32. If any riot, rout, unlawful assembly of the people, or breach of the peace, be made or committed in any part of this commonwealth, a justice of the peace, together with the sheriff or under-sheriff of the county, or the constable, where such riot, assembly, or rout, or breach of the peace shall be made, shall come with the power of the county, if need be, to arrest them ; and shall arrest them, and put them in the jail of the county ; there to abide so long time as shall be limited by a jury, to be summoned by the sheriff or deputy sheriff, and sworn by the justice for that purpose ; and further, until they shall have paid such amercement as the same jury shall assess : and if it happens that such trespassers and offenders be departed before the coming of the said justice and sheriff or under-sheriff, the same justice shall diligently inquire, within a month after such riot, assembly, or rout of people, or breach of the peace so made, and thereof shall hear and determine according to law ; and for this purpose, the sheriff or under-sheriff, or constable, having a precept directed to him by said justice, shall return twelve fit persons, who, having been sworn, or in case of their non-attendance, the deficiency being supplied by by-standers, shall inquire of the said riot, rout, or unlawful assembly, or breach of the peace, and award against those whom they shall find guilty thereof, due pains, by amercement and imprisonment, as is before directed ; and if so many of them should not appear, those who make default, shall be fined by the said justices four pounds each ; and if the default be in the sheriff or under-sheriff, or constable, he shall forfeit to the commonwealth, twenty pounds, to be recovered by action of debt in any court having cognizance thereof ; and moreover the justices of the peace in every county where such riot, assembly, or rout of the people, or breach of the peace, shall not be made in their presence ; then any justice having notice thereof, together with the sheriff or under-sheriff, or constable of the same county, shall do execution of this act, by summoning a jury, and proceeding as heretofore, every one on pain of twenty pounds, to be appropriated to the use of the county, to-

wards lessening the county levy, as often as they shall be found in default of the execution of this act ; and on such default of the justices and sheriff or under-sheriff, the said offence shall be punished as heretofore.

1801.

Sec. 33. No person, great or small, of what condition soever he may be, except the ministers of justice in executing their office, and such as may be in their company assisting them, shall be so hardy to come before the justices of any court, or either of their ministers of justice, doing their office, with force and arms, on pain to forfeit their arms to the commonwealth, and of being fined and imprisoned at the discretion of a jury.

Going with
force and arms
before courts,
&c.

How punished.

Sec. 34. If any person or persons shall profanely curse or swear, or shall be drunk, he, she or they so offending, for every such offence, being thereof convicted by the oath of one or more witnesses (which oath any justice of the peace is hereby empowered and required to administer) or by confession before one or more justice or justices of the peace in the county where such offence shall be committed, shall forfeit and pay the sum of five shillings ; or if the offence or offences be committed in the presence or hearing of one or more justice or justices of the peace, or in any court of record within this commonwealth, the same shall be a sufficient conviction, without other evidence ; and the said offender shall, upon such conviction, forfeit and pay the sum of five shillings, which may be levied by execution as in other cases, and applied towards lessening the county levy.

Profane swearing,
how punished.

Sec. 35. Every person not being a servant or slave, committing adultery or fornication, and being thereof lawfully convicted by the oath of one or more credible witness, or by the confession of the party, shall, for every offence of adultery, forfeit five pounds ; and every offence of fornication, fifty shillings ; which fines shall be applied towards lessening the county levy.

Adultery or
fornication.

How punished.

Sec. 36. No officer, for any civil cause, shall arrest any minister of religion, licensed according to the rules of his sect, and who shall have taken the oath or affirmation of fidelity to the commonwealth, while such minister shall be publicly preaching or performing religious worship, in any church, chapel or meeting-house, or other place of religious worship, on pain of imprisonment and amercement at the discretion of a jury, and of making satisfaction to the party so arrested ; and if any person

Arresting min-
isters of reli-
gion, in certain
cases.

How punished

1801. shall on purpose, maliciously or contemptuously, dis-
 Disturbing re- quiet or disturb any congregation, assembled in any
 ligious worship. church, chapel, meeting-house, or other place for religi-
 ous worship; or misuse any person being there, he may
 be put under restraint during religious worship, by any
 justice present; which justice, if present, or if none be
 present, then any justice before whom proof of the of-
 fence shall be made, may cause the offender to find two
 securities to be bound by recognizance in a sufficient pe-
 nalty for his good behaviour, and default thereof shall
 commit him to prison, there to remain till the next
 court to be held for the same county; and upon con-
 viction of the said offence, before the said court, he shall
 be further punished by imprisonment and amercement,
 at the discretion of a jury. If any person on the sabbath
 day shall himself be found laboring at his own or any
 other trade or calling, or shall employ his apprentices,
 servants or slaves, in labor or other business, whether the
 same be for profit or amusement, unless expressly per-
 mitted by this act, (and no work or business shall be
 done or performed on the sabbath day, unless the ordi-
 nary household offices of daily necessity, or other work
 of necessity or charity,) he shall forfeit the sum of ten
 shillings for every offence, deeming every apprentice,
 servant or slave so employed, and every day he shall be
 so employed, as constituting a distinct offence: *Provi-*
ded, however, that no person who is a member of any re-
 ligious society, who observes as a sabbath any other day
 of the week than Sunday, or the Christian sabbath, shall
 be liable to the penalty hereby incurred for a breach of
 the sabbath; so that they observe one day in seven,
 agreeable to the regulations aforesaid.
- How punished. present, then any justice before whom proof of the of-
 fence shall be made, may cause the offender to find two
 securities to be bound by recognizance in a sufficient pe-
 nalty for his good behaviour, and default thereof shall
 commit him to prison, there to remain till the next
 court to be held for the same county; and upon con-
 viction of the said offence, before the said court, he shall
 be further punished by imprisonment and amercement,
 at the discretion of a jury.
- Sabbath break- If any person on the sabbath
 ing. day shall himself be found laboring at his own or any
 other trade or calling, or shall employ his apprentices,
 servants or slaves, in labor or other business, whether the
 same be for profit or amusement, unless expressly per-
 mitted by this act, (and no work or business shall be
 done or performed on the sabbath day, unless the ordi-
 nary household offices of daily necessity, or other work
 of necessity or charity,) he shall forfeit the sum of ten
 shillings for every offence, deeming every apprentice,
 servant or slave so employed, and every day he shall be
 so employed, as constituting a distinct offence: *Provi-*
ded, however, that no person who is a member of any re-
 ligious society, who observes as a sabbath any other day
 of the week than Sunday, or the Christian sabbath, shall
 be liable to the penalty hereby incurred for a breach of
 the sabbath; so that they observe one day in seven,
 agreeable to the regulations aforesaid.
- Penalty there- Sec. 37. Any person who shall knowingly and frau-
 for. dulently alter or deface any of the marks or brands on
 any horse creature, neat cattle, sheep, hog or goat, or
 who shall assist, knowing the same, shall be fined at the
 discretion of a jury, any sum not exceeding fifty pounds,
 and imprisoned not exceeding six months.
- Altering marks Sec. 38. Any person or persons summoned to attend
 on horses, &c. any sheriff or other officer, to assist such sheriff or other
 officer in the execution of his office, and failing to obey,
 in cases where such person or persons may be legally
 called on, every such person shall, unless he shews suffi-
 cient reason for not attending as aforesaid, be fined in the
- Refusing to o- Sec. 38. Any person or persons summoned to attend
 bey the sum- any sheriff or other officer, to assist such sheriff or other
 mons of a the- officer in the execution of his office, and failing to obey,
 rief. in cases where such person or persons may be legally
 called on, every such person shall, unless he shews suffi-
 cient reason for not attending as aforesaid, be fined in the

sum of fifteen dollars ; and any justice of the peace may give judgment for the same, upon a warrant first issued and executed as in other cases ; and all fines inflicted in such cases shall go towards lessening the county levy.

1801.

Sec. 39. All persons convicted of robbery or larceny, or of being accessory thereto before the fact, shall restore the goods or chattels stolen or taken, to the rightful owner or owners thereof, or shall pay to him, her or them the full value thereof, or so much thereof as shall not be restored.

Stolen goods &c. to be restored.

Sec. 40. The first and second sections, and the latter part of the fourth section, from the word "directed," in the twenty-third line, to the end thereof ; and the fourteenth and sixteenth sections of the act entitled "an act to amend the penal laws of this commonwealth," shall be, and the same are hereby repealed.

Certain clauses of former law repealed.

Sec. 41. All and every person or persons who shall, by virtue of this act, be sentenced to confinement in the jail and penitentiary house, shall be kept therein at hard labor, or in solitude, according to the provisions of the act entitled "an act to amend the penal laws of this commonwealth:" and the court, in passing sentence upon such person or persons, shall direct and appoint for what part or portion of the time of his, or her, or their imprisonment he, she or they shall be placed in the solitary cells of the said jail and penitentiary house, on low and coarse diet, agreeable to the directions of the twenty-second section of the before recited act.

Convicts how to be kept.

Sec. 42. If any person or persons shall, from henceforth, set up or keep any E. O. table, or any other kind of gaming table, at which the games of pharo, equality, or any other game of chance shall be played for money, or shall keep any bank, and induce or permit any person or persons to bet against the said bank ; any person or persons so offending, being thereof lawfully convicted, shall undergo a confinement in the jail and penitentiary house, for a period not less than three months, nor more than twelve months.

Keeping gaming tables of O. &c.

How punished.

Sec. 43. *And be it further enacted,* That in all cases where fines or forfeitures are imposed by this act, the collection of which is not expressly provided for, they shall be recovered and collected as sums of the like amount are by law recoverable, and applied towards

Fines, how to be collected &c applied.

1801.

lessening the levy of the county in which they are recovered : and it shall be the duty of the sheriff or constable, or other person in whose hands any such fines may be, to transmit an account thereof to the clerk of the county court of said county, at least one week before the time of laying their county levy, in every year ; and it shall be the duty of the clerk to enter the same on record, and lay it before the court accordingly.

Repealing
clause.

Sec. 44. So much of every act or acts as comes within the purview of this act, shall be, and the same is hereby repealed.

To commence.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXXVI.

An ACT to amend and reduce into one the several acts concerning the Militia.

Approved December 19, 1801.

See the observations on Chap. 17, Vol. I.

CHAPTER CCCLXXVII.

An ACT for altering the time of holding Courts in this Commonwealth.

Approved December 19, 1801.

Courts of Q.
Sessions, when
held.

In Fayette.

Scott.

Clarke.

Montgomery.

Jessamine.

Madison.

Woodford.

Franklin.

Lincoln.

SECTION 1. *BE it enacted by the general assembly,* That the courts of quarter sessions which now hold four terms in every year in each county in this commonwealth, shall hereafter hold but three terms in every year ; at the times and in the manner hereby directed : In the county of Fayette, on the second Monday in April, August and November ; in the county of Scott, on the fourth Monday in April, July and October ; in the county of Clarke, on the fourth Monday in March, June and October ; in the county of Montgomery, the first Monday in April, July and October ; in the county of Jessamine, on the third Monday in April, July and November ; in the county of Madison, on the first Monday in March, June and September ; in the county of Woodford, on the first Monday in April, July and November ; in Franklin, on the fourth Monday in March, June and October ; in Lincoln, on the second

Monday in March, June and September; in Garrard, 1801.
 on the third Monday in March, June and September; ^{Garrard.}
 in Pulaski, on the fourth Monday in March, June and ^{Pulaski.}
 September; in Mercer, on the fourth Monday in Feb- ^{Mercer.}
 ruary, May and August; in Shelby, on the second ^{Shelby.}
 Monday in April, July and December; in Wayne, on ^{Wayne.}
 the third Monday in April, July and October; in Cum- ^{Cumberland.}
 berland, on the second Monday in April, July and Oc-
 tober; in Knox, on the first Monday in April, July and ^{Knox.}
 October; in Livingston, on the first Monday in April, ^{Livingston.}
 July and October; in Christian, on the second Monday ^{Christian.}
 in April, July and October; in Logan, on the third ^{Logan.}
 Monday in April, July and October; in Muhlenburg, ^{Muhlenburg.}
 on the fourth Monday in April, July and October; in
 Warren, on the third Monday in May, August and ^{Warren.}
 November; in Barren, on the fourth Monday in April, ^{Barren.}
 July and October; in Ohio, on the first Monday in May, ^{Ohio.}
 August and November; in Henderson, on the second ^{Henderson.}
 Monday in May, August and November; in Breckenridge, ^{Breckenridge.}
 on the third Monday in May, August and November;
 in Henry, on the third Monday in March, July and De- ^{Henry.}
 cember; in Jefferson, on the first Monday in February, ^{Jefferson.}
 May and September; in Nelson, on the second Monday ^{Nelson.}
 in March, June and October; in Washington, on the first ^{Washington.}
 Monday in March, June and October; in Green, on the ^{Green.}
 third Monday in March, June and September; in Hardin, ^{Hardin.}
 on the fourth Monday in March, June and September;
 in Bourbon, on the third Monday in March, June and ^{Bourbon.}
 October; in Mason, on the fourth Monday in April, ^{Mason.}
 July and October; in Fleming, on the second Monday ^{Fleming.}
 in March, June and October; in Floyd, on the first ^{Floyd.}
 Monday in April, July and October; in Harrison, on ^{Harrison.}
 the first Monday in April, July and November; in
 Campbell, on the first Monday in March, June and Oc- ^{Campbell.}
 tober; in Boone, on the second Monday in March, June ^{Boone.}
 and October; in Pendleton, on the second Monday in ^{Pendleton.}
 April, July and October; in Nicholas, on the first Mon- ^{Nicholas.}
 day in March, June and October; in Adair, on the ^{Adair.}
 fourth Monday in April, July and November; in Gal- ^{Gallatin.}
 latin, on the third Monday in March, June and Octo-
 ber; in Bullitt, on the third Monday in March, June ^{Bullitt.}
 and September; in Bracken, on the first Monday in ^{Bracken.}
 April, July and October.

Sec. 2. *Be it further enacted*, That in the counties of ^{Duration of}
 Fayette, Bourbon, Mason, Jefferson and Mercer, the ^{terms,}

1801. courts shall continue to set ten days at each term, if the business before them require it; and in the county of Nelson, eight days, if the business require it; and in every other county, six days, if the business require it.

Procs, &c.
when return-
able.

Sec. 3. *Be it further enacted*, That all process and recognizances entered into or made returnable to the ensuing terms of the present quarter session courts, shall be considered as legally returnable to the next terms directed to be holden by this act.

County courts,
when held.

Sec. 4. *Be it further enacted*, That the county courts in each county shall commence on the same day above directed for each county, in every other month except in the months in which the present quarter session courts are directed to be held by this act.

To commence, This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCLXXVIII.

An ACT for the benefit of Joseph Dupuy.

Approved December 2, 1801.

Compensation is made him for extra services, as sheriff of Henry, on the trial of Thomas Alexander, charged with murder.

CHAPTER CCCLXXIX.

An ACT for the benefit of Samuel M'Gehee.

Approved December 14, 1801.

Fifteen dollars was by this act given for a beef, taken from him by captain Ray's company, on the Wabash expedition, in the year 1786.

CHAPTER CCCLXXX.

An ACT for the benefit of Hanna M'Kinley.

Approved December 18, 1801.

She was allowed fifty dollars, for services rendered by her husband, Dr. K'Kinley, to a wounded soldier, who was unable to pay.

CHAPTER CCCLXXXI.

An ACT for the benefit of Richard Taylor.

Approved December 18, 1801.

This act allows him pay for pointing the walls of the penitentiary.

CHAPTER CCCLXXXII.

1801.

An ACT for the benefit of William E. Boswell.

Approved December 18, 1801.

He had served as commissioner for Harrison county. The sheriff and his securities became insolvent, and left the state, *per quod* Boswell received no pay for his services. Wherefore this act authorized him to be paid out of the treasury.

CHAPTER CCCLXXXIII.

An ACT for the benefit of Martin Simms.

Approved December 19, 1801.

He had discovered a salt-lick on vacant land, and this act permitted him to work it seven years without paying any thing for it.

CHAPTER CCCLXXXIV.

An ACT for the benefit of Maurice Langhorne.

Approved December 19, 1801.

He had, as deputy sheriff of Bourbon, collected some audited warrants, payable out of militia fines. The law of 1800, respecting militia fines, prevented him from availing himself of these warrants. This act directed the paymaster to pay them.

CHAPTER CCCLXXXV.

An ACT for the relief of William Rout.

Approved December 2, 1801.

He had been a captain in Logan's expedition against the Shawnees, in 1786, and received a wound which utterly disabled him from supporting himself. Wherefore this act gave him the sum of 18 pounds per annum.

CHAPTER CCCLXXXVI.

An ACT for the relief of John H. Craig.

Approved December 2, 1801.

He had been a lieutenant on the Wabash campaign of 1786, had received a certificate for his services, and had lost it. This act authorized the renewal of it.

CHAPTER CCCLXXXVII.

An ACT for the relief of William Morrow, and his securities.

Approved December 19, 1801.

Morrow had been sheriff of Bourbon, and the commonwealth had obtained a judgment against him and his securities for taxes. This act granted them an indulgence of six months.

NOVEMBER SESSION,

1801.

CHAPTER CCCLXXXVIII.

An ACT for the relief of William Rogers.

Approved December 2, 1801.

William Rogers had brought a suit on behalf of the commonwealth against Peter Stidger, on the act concerning the public arms (*Vide* Chap. 223, *ante*,) and obtained judgment, which judgment was reversed in the court of appeals, because the act was unconstitutional, and Rogers subjected to the cost. This act remunerated him therefor.

CHAPTER CCCLXXXIX.

An ACT for the relief of Henry Hawkins.

Approved December 13, 1801.

This act relinquished to him the commonwealth's interest in 50 acres of land, lying in Bullitt, which was supposed to have escheated.

CHAPTER CCCXC.

An ACT for the relief of James Craig and James Weir, and other purposes.

Approved December 3, 1801.

Weir had acted as deputy to a former sheriff, after his principal had moved out of the county [Muhlenburg.] This act legalised that proceeding, and gave to Craig, the [then] present sheriff, three months to complete his collections.

CHAPTER CCCXCI.

An ACT concerning Daniel Barry.

Approved November 26, 1801.

He was indicted for murder in the Bairdstown district court. This act authorised him to be tried in the Danville district court, on account of unusual prejudice and party spirit which prevailed at Bairdstown.

CHAPTER CCCXCII.

An ACT directing a sale to be made of part of the real estate of David Martin, deceased, for the payment of his debts.

Approved December 14, 1801.

CHAPTER CCCXCIII.

An ACT giving further time to the Sheriff of Nicholas County to make his Collections.

Approved December 3, 1801.

This act allowed him, (in consequence of sickness,) four months to complete his collections.

X. YEAR OF THE COMMONWEALTH.

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CHAPTER CCCXCIV.

1801.

An ACT for the benefit of Joshua Jones.

Approved December 2, 1801.

He was allowed two years longer to locate the land granted him last session, and permitted to locate it in eight surveys.

CHAPTER CCCXCV.

An ACT to amend an act entitled "an act to authorise John Bailey to locate certain Vacant Lands."

Approved November 26, 1801.

This act allowed him two years longer to complete his bloomery, on which the grant of land made to him at January session, 1798, depended.

CHAPTER CCCXCVI.

An ACT for the relief of the Heirs of Solomon Spears.

Approved December 11, 1801.

Some of them being under age, and they being entitled to a moiety of two small tracts of land, encumbered with interfering claims, this act authorised Henry Crift to make legal deeds to the purchasers of the same.

CHAPTER CCCXCVII.

An ACT granting relief to the Children of Josiah Young.

Approved November 28, 1801.

In consideration of their father and mother having both died shortly after they had settled on some vacant land, and their being poor, the children were allowed until 1812, to pay the state price for 200 acres, including the plantation where their father had lived.

CHAPTER CCCXCVIII.

An ACT for the relief of Sheriffs, Witnesses, Venire and Jailor, attending the Logan District Courts, at the terms in May and October, in the present year.

Approved December 3, 1801.

No judge having attended at either of those terms, the clerk was not authorised to certify the attendance or services of the persons above mentioned. This act gives him authority and requires him so to do.

NOVEMBER SESSION,

1801.

CHAPTER CCCXCIX.

An ACT to legalize, in certain cases, the proceedings of the County Courts of Livingston and Logan.

Approved November 26, 1801.

They had appointed commissioners, and laid the county levy, not in the proper months. This act renders the proceedings valid.

CHAPTER CCCC.

An ACT authorising Commissioners to fix the permanent Seat of Justice for Campbell County.

Approved December 14, 1801.

CHAPTER CCCC.I.

An ACT authorising a sale of part of the Estate of George M'Cully, deceased, and for other purposes.

Approved December 19, 1801.

He owned considerable of land in Kentucky, and had given bonds to make deeds; but, owing to difficulties in obtaining titles himself, had not complied with them. He had lately died intestate, at his farm, in Alleghany county, Pennsylvania, leaving a widow and daughter. Judgments had been obtained against his administrators on the bonds aforesaid, and his farm in Pennsylvania, likely to be sold; to prevent which, and for the support of his daughter, this act appointed five commissioners, whom it invested with power to sell as much as 8000 acres of his Kentucky lands, for the purposes aforesaid.

CHAPTER CCCCII.

An ACT granting certain Lands to Solomon Brunts and George Wolfscale.

Approved December 19, 1801.

They had discovered a bank of iron ore, on vacant land; and to enable them to manufacture it into iron, this act allowed them to locate 1000 acres of land, in not more than five surveys, and not more than ten miles from the ore, at the price of 30 dollars per 100 acres, to be paid on or before December 1st 1805.

CHAPTER CCCCIII.

An ACT to amend an act for the relief of the Citizens of Mason County, and others.

Approved December 19, 1801.

This act put the purchasers at Dobyn's sales, on the same footing with those who had paid the taxes were put by the act of last session.

X. YEAR OF THE COMMONWEALTH:

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CHAPTER CCCCIV.

1801.

An ACT concerning Philips and Samuel Caldwell.

Approved November 19, 1801.

They had discovered a salt-lick on vacant land. This act authorized them to survey not less than 1000 acres of land, to include it, and obtain a grant therefor, on paying 100 dollars per hundred acres, in six annual instalments.

CHAPTER CCCCIV.

An ACT giving certain Sheriffs further time to make their Collections.

Approved December 18, 1801.

This act allowed the sheriff of Mercer five months, and the sheriffs of Livingston, Mason and Hamilton, each, the additional time of four months.

CHAPTER CCCCVI.

An ACT authorising Michael Campbell and others to erect a Mill on the Beech Fork.

Approved December 19, 1801.

WHEREAS it is represented to the present general assembly, that great advantages will result to the community at large, by permitting a mill to be erected on the Beech fork, in the county of Nelson, at an island near the mouth of Cedar creek, under certain restrictions: therefore,

Preamble.

Sec. 1. *Be it enacted by the general assembly, That* Michael Campbell, John Weller, sen. and John Caldwell, may, and they are hereby authorised and permitted to erect a dam for the purpose of a mill, at least eight feet high, across that part of the Beech fork which runs south or east of the said island; and also a dam across the island, as high as they may think necessary.

Authorised to build a dam, & its height.

Sec. 2. *And be it further enacted, That* the said Michael Campbell and company, are authorised and permitted to erect another dam, four inches high from the lowest part of the present bed, when averaged across the channel of the said Beech fork which runs north or west of the island between the mouth of the said Cedar creek and the upper point of the said island.

Another dam, & its height.

Sec. 3. *Be it further enacted, That* the said Campbell and company shall erect, and keep in good repair, a dam across that part of the stream running through the island, at least eight feet high, under the penalty of five hun-

Another dam, & its height,

1801.

dred dollars; to be recovered by a suit in the Danville district court, to the use of the party injured.

To remove ob-
structions.

Under penalty.

When the mill
is to be comple-
ed.

To convey
boats, &c. un-
der penalty.

Provide.

Notice of the
arrival of boats,
&c. how given.

Penalty for de-
taining boats.

Sec. 4. *And be it further enacted*, That the said Campbell and company, so soon as they shall commence the erection of said dams, shall immediately remove all the stumps or other obstructions then in the said north or west channel; and the said company and their successors, shall, so long as the said dams stand at the places aforesaid, be bound to keep open and clear of all obstructions whatsoever, under the penalty of three thousand pounds, to be recovered and applied as aforesaid: *Provided always*, that the said Campbell, Weller and Caldwell shall, within three years from and after the passage of this act, erect the said mill; otherwise the privileges hereby granted, shall be void and of no effect; any thing herein contained to the contrary notwithstanding.

Sec. 5. *Be it further enacted*, That the said Campbell, Weller and Caldwell, shall, for and during the time they are erecting the dams aforesaid, and for the term of two years after the same is completed, be bound in a bond to be given with sufficient security in the county court of Nelson, to the governor for the time being, and his successors, in the penalty of twenty-five thousand dollars, to be recovered and applied as aforesaid, to receive all boats or other craft landed on the north or west side, and take command thereof, at least one quarter of a mile above the upper point of said island, and deliver the same in the order they received them, within half a mile below the lower point of the aforesaid island: *Provided always*, the hands on board the said boat or craft shall assist, if required, under the directions of the said Campbell and company, or any person they may appoint for that purpose.

Sec. 6. *Be it further enacted*, That notice in writing shall be set up at the mill door, or a post which shall be fixed by the said company at the east end of the main dam, so soon as they begin the erection thereof, at least two hours before sunset, that the boat or other craft hath arrived within two miles distance of the said dam; and for each and every hour any boat or boats, or other craft, shall be detained after such notice by any one of said company, or their representative, not taking command as aforesaid, or by the boat or other craft being prevented from passing through the dam by not having water enough, when there is a sufficiency to float her or them to

the place, from the Bairdstown ware-house; the said company shall pay four dollars, to be recovered as debts of the like amount are: *Provided always*, that the said Campbell and company shall not be liable to any damages where notice has not been given as aforesaid.

1801.

Sec. 7. *Be it further enacted*, That the finding of a jury against said defendants, on a suit brought upon said bond, where it shall appear that the boats or other craft had been stove or materially damaged, or the cargo, in consequence of the erection of such dams, and at the time the said company, or any one of them, or any other person appointed as aforesaid, were on board, and conducted the same, and also, after the said dams had been finished, shall be sufficient proof of the navigation being injured by the erection of said dams; and if the said Campbell and company shall not, within one year from such proof, erect good and sufficient locks for the safe passage of all boats or other craft, and a sufficient slope for the passage of fish, the dams shall be considered as a nuisance.

What shall be evidence that the navigation is injured.

Locks & slopes to be erected.

Sec. 8. *Be it further enacted*; That the Danville district court shall have full and complete jurisdiction in all cases above ten pounds, which may arise under this act; but shall have no jurisdiction in causes of ten pounds or under: and the clerk of the said court is hereby authorised to issue the necessary process to any county in this commonwealth; and a copy of any of the bonds directed to be given by this act, attested by the clerk of Nelson, shall be admitted as evidence on the trial, and shall not be void upon the first recovery; and the Danville district court shall, when necessary, direct the said bonds to be renewed in the manner directed by this act; which bonds, so renewed, may be put in suit in manner aforesaid.

Jurisdiction given to the Danville district court in certain cases.

This act shall commence and be in force from its passage. To commence.

CHAPTER CCCCVII.

An ACT authorising a Lottery in the Town of Millersburg.

Approved December 2, 1801.

The object of this lottery was to promote the lead works near Millersburg. It required that each of the drawers, examiners, clerks, and others concerned in the drawing, should be on oath, and that two justices of Bourbon, should attend. The lottery, however, was never drawn.

NOVEMBER SESSION,

1801.

CHAPTER CCCCVIII.

An ACT to amend the act entitled "an act for opening a Road from Man's Lick to Big Barren."

Approved December 18, 1801.

This act appoints new commissioners, and directs the road to go by Shepherdsville and Elizabethtown.

CHAPTER CCCCIX.

An ACT for the Appropriation of Money.

Approved December 19, 1801.

This act contains merely the ordinary annual appropriations.

CHAPTER CCCCX.

AN ACT to confirm the proceedings of the County Court of Wayne.

Approved December 14, 1801.

WHEREAS the county court of Cumberland have failed to appoint a commissioner of the tax in that part of the same which is now Wayne county; and it is represented that great evils would result to the county as well as to the commonwealth, if a remedy was not provided therefor:

Sec. 1. *Be it therefore enacted by the general assembly,* That the proceedings of the said county court of Wayne, appointing Jonathan Tall as commissioner of the tax for the same, at the November term of the said county court, 1801, be, and the same is hereby confirmed.

Sec. 2. And the said county court may proceed to lay their county levy in the month of January or March next; any law to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCCXI.

An ACT authorising the Courts of Quarter Sessions and County Courts of Mercer, to use the Danville District Jail as their County Jail.

Approved November 26, 1801.

Their jail had been consumed by fire.

APPENDIX.

COLLECTION

OF ALL THE

ACTS OF PARLIAMENT AND ACTS OF
VIRGINIA,

OF A GENERAL NATURE,

*WHICH REMAIN IN FORCE IN THE STATE OF
KENTUCKY,*

WHICH HAVE NOT BEEN INSERTED IN THE FIRST VOLUME
OF THIS WORK.

COMPILED AND DIGESTED

BY WILLIAM LITTELL, ESQ.

APPENDIX

TO

VOLUME II.

CONVEYANCES AND ESTATES.

1. 4 EDWARD I, CHAP. 6, A. D. 1276.

By what words in a Feoffment a Feoffer shall be bound to Warranty.

IN deeds where is contained *dedi et concessitate tenementum*, without a clause that containeth warranty, and to be holden of the givers and their heirs by a certain service, it is agreed that the givers and their heirs shall be bounden to warranty. And where is contained *dedi et concessi*, &c. to be holden of the chief lords of the fee, or of other, and not of feoffers or of their heirs, reserving no service without homage, or without the aforesaid clause, then heirs shall not be bounden to warranty, notwithstanding the feoffer during his own life, by force of his own gift, shall be bound to warrant.

2. INCERTI TEMPORIS.

Statutum pro tenentibus per legem Angliæ.

A Statute introducing Tenancy by Curtesy.

CUMQUIS itaque terram cum uxore in maritagio ceperit si ex eadem uxore sua heredem filium vel filiam clamantum auditum intra quatuor parietes habeat procreatum si idem vir uxorem suam supervixerit, sive heres vivat, sive non, ipsi viro remanebit maritagium, post mortem viri ad donatorem vel ad ejus heredem reversurum. Si autem nullum ex uxore sua habuerit heredem tunc post mortem uxoris ad donatorem vel ad ejus heredem revertetur.

Et hæc est causa quare in maritagio non solet recipi homagium. Si enim donata esset aliqua terra sic in maritagium, vel alio modo, quod cum recipiatur homagium tanquam ad do-

naturem de cetero vel ad ejus heredem licite posset reverti ut supradictum est. Illud vero judicium erit de secundo viro, quod dictum est de primo, si heres reliquerit primo sive non.

3. 18 EDWARD I, CHAP. 1, A. D. 1290.

Quia Emptores Terrarum.

OUR lord, the king, in his parliament at Westminster, in the 18th year of his reign, at the instance of the great men of the realm, granted provided and ordained, that from henceforth it shall be lawful to every freeman to sell, at his own pleasure, his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such customs and service as his feoffer held before.

[CHAP. 2.] And if he sell any part of such lands or tenements to any, the feoffee shall immediately hold it of the chief lord, and shall be forthwith charged with the services for so much as pertaineth, or ought to pertain to the said chief lord for the same parcel, according to the quantity of the land or tenement so sold.

4. 35 EDWARD II, A. D. 1322.

De Finibus.

THE king unto the justices of his bench greeting : Whereas of late we have ordained that all such fines as are to be levied in our courts, be lawfully levied, which we will in no wise to be infringed or to be annulled of their whole power, we have sent unto you our mind in writing, firmly to be observed ; that is, to wit, that as well the parties demandant or plaintiff, as the tenants or defendants, that will yield or acknowledge their right of lands or tenements unto other in pleas of warrantie, chartæ, covenant and other, whereupon fines are to be levied afore you, before such fines do pass the parties shall appear personally, so that their age, idiocy, or any other default, (if any there be,) may be judged and discerned by you : Provided notwithstanding, that if any person be by age or impotence decrepit, or by casualty so oppressed, that by no means he is able to come before you in our courts, then in such case we will that two of you, by the assent of the residue of the bench, shall go unto the party so diseased, and receive his cognisance upon that plea and form of plea that he hath in our court, whereupon the same fine ought to be levied. And we will not that any of our barons of the exchequer, or

our justices, shall admit any attorneys but only in pleas that pass before them in the benches, and in the places where they shall be assigned by us ; and the same power of admitting attorneys we prohibit and deny to the clerks and servants of the said barons and justices, and do ordain that if any attorneys be admitted by any of the persons aforesaid, their admission shall be of none effect: Reserved always, to the chancellor for the time being, his authority in admitting attorneys, according to whose discretion they shall be admitted, and to our chief justice, as hath been heretofore observed in the admission of attorneys.

5. 39 HENRY VI, CHAP. 2, A. D. 1461.

A Woman at fourteen years of age at the death of her ancestor, shall have Livery of her Land.

IT is ordained and established, that women being of the age of fourteen years at the death of their ancestors, without question or difficulty, shall have livery of their lands and tenements descended to them ; for so the law of this land will that they should have.

6. 1 RICHARD III, CHAP. 1, A. D. 1483.

Conveyances.

BE it ordained, established and enacted, by the advice of the lords, spiritual and temporal, and by the commons, in this present parliament assembled, and by authority of the same, that every estate, feoffment, gift, release, grant, leases and confirmations of lands, tenements, rents, services or hereditaments, made or had, or hereafter to be made or had, by any person or persons being of full age, of whole mind, and not in duress to any person or persons, and all recoveries and executions had or made shall be good and effectual to him to whom it is so made, had or given, and to all other, to his use against the seller, feoffer, donor or grantor thereof, and against the sellers, feoffers or grantors, his or their heirs, claiming the same only as heir or heirs to the same sellers, feoffers, donors or grantors, and every of them, and against all other having or claiming any title or interest in the same, only to the use of the same seller, feoffer, donor or grantor, sellers, feoffers, donors or grantors, or his or their said heirs, at the time of the bargain, sale, covenant, gift or grant made, saving to every person or persons such right, title, action or interest, by reason of gift in tail thereof made, as they ought to have had if this act had not been made.

7. 27 HENRY VIII, CHAP. 16, A. D. 1535.

For Inrollment of Bargains and Sales.

[There is no doubt but that all the provisions of this act have been superseded by the acts of assembly, but it has been retained from a consideration of the great importance of thoroughly understanding the adjudications which have been had on it.]

BE it enacted by the authority of this present parliament, That from the last day of July which shall be in the year of our Lord God 1536, no manors, lands, tenements, or other hereditaments, shall pass, alter or change from one to another, whereby any estate of inheritance or freehold shall be made to take effect in any person or persons, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed and inrolled in one of the king's courts at Westminster, or else within the same county or counties where the same manors, lands or tenements so bargained and sold lie, or before the *Custos Rotulorum* and two justices of the peace and the clerk of the peace of the same county or counties, or two of them at least, whereof the clerk of the peace shall be one; and the same inrollment to be had and made within six months next after the date of the same writings indented; and the clerk of the peace for the time being within every such county shall sufficiently inroll and engross in parchment the same deeds or writings indented as is aforesaid, and the rolls thereof at the end of every year shall deliver unto the said *Custos Rotulorum* of the same county for the time being, there to remain in the custody of the said *Custos Rotulorum* for the time being, amongst other records of every of the same counties where any such inrollment shall be so made, to the intent that every party that hath to do therewith may resort and see the tenor and effect of every such writing.

LEASES AND LEASEHOLD ESTATES.

1. 21 HENRY VIII, CHAP. 15. A. D. 1529.

Farmers shall enjoy their leases against recoveries by feigned titles.

WHEREAS afore this time divers persons have made leases of their manors, lands, tenements and other hereditaments, sometimes by their indentures, and sometimes without writing, to other persons, for term of years, taking of them great fines for the incomes of the same leases; and af-

ter the same lessors, their heirs or assigns, have caused and suffered recoveries to be had against them in the courts of our sovereign lord the king, and in others lords courts, upon feigned and untrue titles, by craft or covin, to put the same termers from their said terms; and after such recoveries had, the same recoverees, by reason of such recoveries and judgments, have entered into the same manors, lands, tenements, and other hereditaments, so to farm letten, and have thereof expelled the said termers, contrary to their said leases, covenants, and agreements, and because it was doubted to some persons whether the said termers might falsify such recoveries or not.

II. Be it therefore enacted by the king our sovereign lord, by the assent of the lords, spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all such termers shall and may falsify, for his term only, such recoveries, as well heretofore had, as hereafter to be had, in such wise and form as tenant of a freehold shall and may do by the course of the common law, where such tenant of freehold was neither privy nor party to the same recovery.

III. And that the same termers, their executors and assigns, notwithstanding such recoveries so had, shall retain, hold and enjoy their said terms, according to their said leases, against all such recoverees, their heirs and assigns, as they should or might have done against the said lessors, if such recovery had not been had nor suffered; and that the said recoverers, their heirs and assigns, after such recovery had, shall have like remedy against the said termers, their executors or assigns, by avowry or action of debt, for the rents and services reserved upon the same leases, being due after the same recoveries; and also like actions against them for waste done after the same recoveries so had, in like manner and form as the said lessors should or might have had, if the same recoveries had never been had.

IV. And also, be it further enacted by the authority aforesaid, that no manner of statute of the staple statute merchant, nor execution by *elegit*, be hereafter avoided or in any wise made frustrate by means of any such feigned recovery; but that all persons having any lands, tenements, or other hereditaments in execution, or being entitled to have execution of any manors, lands, or tenements, by any such means, shall have, by force of this statute, like remedy to avoid and falsify.

fy the same recoveries as is before ordained and provided for the lease for term of years.

N. B. There has evidently been a mistake in transcribing or printing of this statute of the word *recoveress* (in two places) instead of *recoverers*.

2. 32 HENRY VIII, CHAP. 28, A. D. 1540.

Leases.

ALL leases hereafter to be made of any manors, lands, tenements, or other hereditaments, by writing indented under seal for term of years, or for term of life, by any person or persons being of full age of twenty-one years, having any estate of inheritance, either in fee simple or in fee tail in their own right, or in the right of their churches or wives, or jointly with their wives, of any estate of inheritance, made before the coverture or after, shall be good and effectual in the law, against the lessors, their wives, heirs and successors, and every of them, according to such estate as is comprised and specified in every such indenture of lease, in like manner and form as the same should have been, if the lessors thereof, and every of them, at the time of making such leases, had been lawfully seized of the same lands, tenements and hereditaments comprised in such indenture, of a good, perfect, and pure estate of fee simple thereof, to their own only uses.

Provided always, that the wife be made a party to every such lease, which hereafter shall be made by her husband of any manors, lands, tenements or hereditaments, being the inheritance of the wife, and that every such lease be made by indenture, in the name of the husband and his wife, and she to seal the same; and that the farm and rent be reserved to the husband, and to the wife, and to the heirs of the wife, according to her estate of inheritance in the same; and that the husband shall not in any wise aliene, discharge, grant or give away the same rent reserved, nor any part thereof, longer than during the coverture, without it be by fine levied by the said husband and wife; but that the same rent shall remain, descend, revert or come after the death of such husband unto such person or persons and their heirs, in such manner and sort as the lands so leased should have done, if no such lease had been thereof made.

And moreover, for certain consideration, be it enacted, that no fine, feoffment, or other act or acts hereafter to be made, suffered or done, by the husband only, of any manors, lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any

wise be or make any discontinuance thereof, or be prejudicial or hurtful to the said wife or her heirs, or to such as shall have right, title or interest to the same, by the death of such wife or wives, but that the same wife and her heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such manors, lands, tenements and hereditaments, according to their rights and titles therein, any such fine, feoffment or other act to the contrary notwithstanding; fines levied by the husband and wife (whereunto the said wife is party and privy) only except.

3. 32 HENRY VIII, CHAP. 34, A. D. 1540.

Grantees of reversions may take advantages of the conditions to be performed by the Lessees.

ALL persons being grantees or assignees to or by our sovereign lord the king, or to or by any other person or persons than the king's highness, and the heirs, executors, successors and assigns of every of them, shall and may have and enjoy like advantages against the lessees, their executors, administrators and assigns, by entry for the non-payment of the rent, or for doing waste or other forfeiture; and also shall and may have and enjoy all and every such like, and the same advantages, benefit and remedies, by action only, for not performing of other conditions, covenants, or agreements contained and expressed in the indentures of their said leases, demises, or grants, against all and every the said lessees and farmers and grantees, their executors, administrators and assigns, as the said lessors or grantors themselves, or their heirs, or successors, ought, should or might have had and enjoyed at any time or times.

II. Moreover, be it enacted by the authority aforesaid, that all farmers, lessees and grantees of lordships, manors, lands, tenements, rents, parsonages, tithes, portions, or any other hereditaments, for term of years, life or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy, against all and every person and persons, and bodies politic, their heirs, successors and assigns, which have or shall have any gift or grant of the king our sovereign lord, or any other person or persons of the reversion of the same manors, lands, tenements and other hereditaments, so letten, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their lease or leases, as the same lessees or any of them, might and should have had against the said lessors.

and grantors, their heirs and successors ; all benefits and advantages of recoveries in value, by reason of any warranty in deed or in law, by voucher or otherwise, only excepted.

RENTS, DISTRESS, &c.

I. ACTS OF PARLIAMENT.

1. 51 HENRY III, STAT. 4, A. D. 1266.

Statute De Distractione Scaccarii.

FORASMUCH as the commonalty of the realm hath sustained great damage by wrongful taking of distresses which have been made by sheriffs, and by other the king's bailiffs, for the king's debt, or for any other cause : It is therefore provided and ordained, that when a sheriff or any other man doth take the beasts of other, they to whom the beast do belong may give them feeding without disturbance, so long as they be impounded, without giving any thing for their keeping ; and that such distresses be reasonable, after the value of the debt or demand, and by the estimation of neighbors, and not by strangers, and not outrageous.

And the king willeth that all debts of summons of the exchequer that the sheriff or bailiff have confessed receipt shall be allowed him forthwith so that whether he received all the debt, or part, it shall never come more in demand, nor summons after the sheriff hath confessed the receipt.

The effect of this last sentence seems to be to make a sheriff's receipt (once acknowledged) in revenue matters, completely intraversable. It must be admitted that in the translation it is not very clearly expressed, but I have attempted no alteration of it. The original is as follows : "*Et voet le Roi que toutes les dettes de la somons de Leschequer que les Viscountes ou les Bailiffs oint receu gils soient mainlenant allerours le quel gils eient receu tout le dette ou partie issint que mes ne vieque en somons ceo que le Viscount avera conu soi aver receu.*" &c.

2. 52 HENRY III, CHAP. 1, A. D. 1267.

Against taking Revenge or Distress unlawfully.

IT is provided, agreed and granted, that all person, as well of high as of low estate, shall receive justice in the king's courts, and none from henceforth shall take any revenge or distress of his own authority, without award of our court, though he have damage or injury whereby he would have amends of his neighbour, either higher or lower. And upon the aforesaid article it is provided and granted, that if any

from henceforth take such revenges of his own authority, without award of the king's court, and be thereof convict, he shall be punished by fine, and that according to the trespass ; and likewise if one neighbour take a distress of another, without award of the king's court, whereby he hath damage, he shall be punished in the same wise, and that after the quantity of the trespass ; and nevertheless sufficient and full amends shall be made to them that have sustained losses by such distress.

See, in the next chapter, an exception with respect to landlords.

3. 52 HENRY III, CHAP. 3, A. D. 1267.

IF any, of what estate soever he be, will not suffer such distresses as he hath taken to be delivered by the king's officers, after the law and custom of the realm, or will not suffer summons, attachments or executions of judgments given in the king's courts to be done according to the law and custom of the realm, he shall be punished by fine as one that will not obey the law. And if any one, of what estate soever he be, distrain his tenant for services and customs being due unto him, or for any other thing for which the lord of a fee hath cause to distrain, and after it is found that the same services are not due, the lord shall not therefore be punished by fine, as in the cases aforesaid, if he do suffer the distresses to be delivered according to the law and custom of the realm ; but shall be amerced as hitherto hath been used, and the tenant shall recover his damages against him.

See the last part of the preceding chapter, and note the difference.

4. 52 HENRY III, CHAP. 4, A. D. 1267.

Distress not to be driven out of the County, and to be reasonable.

NONE from henceforth shall cause any distress that he hath taken to be driven out of the county where it was taken, and if one neighbour do so to another of his own authority, and without judgment, he shall make fine as for a thing done against the peace. Nevertheless, if the lord presume so to do against his tenant, he shall be grievously punished by amercement. Moreover distresses shall be reasonable, and not too great ; and they that take great and unreasonable distresses, shall be grievously amerced for the excess of such distresses.

5. 32 HENRY VIII, CHAP. 38, A. D. 1540.

Rents, Distress, &c.

BE it enacted by the authority of this present parliament, That the executors and administrators of every tenant in fee simple, fee tail, or for term of lives, of rents, services, rent charges, rents seck and fee-farms, unto whom any such rent or fee-farm is or shall be due and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants that ought to have paid the said rent or fee-farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also furthermore that it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee-farm is or shall be due and not paid at the time of his death as aforesaid, to distrain for the arrearages of all such rents and fee-farms upon the lands, tenements or other hereditaments which were charged with the payment of such rents or fee-farms, and chargeable to the distress of the said testator so long as the said lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee-farm so being behind to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said land, tenements and hereditaments, only by and from the same tenant by purchase, gift or descent, in like manner as their said testator might or ought to have done in his life time; and the said executors and administrators shall for the same distress lawfully make avowry upon their matter aforesaid.

And be it further enacted by the authority aforesaid, That if any man which now hath or hereafter shall have in the right of his wife, any estate in fee simple, fee tail or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be or hereafter shall be due, behind and unpaid in the said wife's life, then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages in like manner and form as he might have done if his said wife had been living, and make avowry upon his matter as aforesaid.

And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have or hereafter

shall have any rents or fee-farms for term of life or lives of any other person or persons, and said rent or fee-farms now be or hereafter shall be due, behind and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or fee-farm did depend or continue; and after the said person or persons do die, then he unto whom the said rent or fee-farm was due in form aforesaid, his executors or administrators, shall and may have an action of debt against the tenant in demesne that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee-farms were issuing, and payable in such like manner and form as he ought or might have done if such person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, had been in full life and not dead, and the avowry for the taking of the same distress to be made in manner and form aforesaid.

II. ACTS OF VIRGINIA.

6. 1748, CHAP. 10, PAGE 202, V. L.

An ACT for the better securing the payment of Rents, and preventing the fraudulent practices of Tenants.

I. *BE it enacted by the Lieutenant-Governour, Council and Burgesses of this present General Assembly, and it is hereby enacted by the authority of the same, That where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained, shall not, within ten days after such distress taken, and notice thereof, and the cause of such taking left at the chief mansion-house, or other most notorious place on the premises, charged with the rent distrained for, replevy the same, by sufficient security given to the sheriff, or officer serving such distress, to pay the money or tobacco, and all costs, with lawful interest for the same, at the end of three months, in such case such sheriff or officer shall and may sell the goods and chattels so distrained, by public auction, to the highest bidder, either for money or tobacco, according as the rent reserved shall be due and payable, in the like manner as goods or chattels taken in execution; and all bonds and securities taken upon such sale shall be returned by the sheriff or officer, and be of the like force, and leviable when due, in the same manner as bonds taken upon executing a writ of fieri facias.*

II. *Provided always*, That when distress shall be made for tobacco, between the last day of September and the last day of December in any year; and the goods distrained shall not be replevied as aforesaid, such goods shall be sold, and security taken for paying the tobacco by the first day of January then next; and the bonds taken for the same, and costs of seizure and sale, shall be by the officer delivered to the landlord for whom distress was made.

III. *And be it further enacted, by the authority aforesaid*, That in case any distress and sale shall be made, under colour of this act, for rent pretended to be in arrear and due, where in truth no rent is arrear or due, to the person or persons distraining, or to him, her, or them, in whose name or names, or right, such distress shall be taken as aforesaid, then the owner of the goods and chattels so distrained and sold, his executors, or administrators, shall have remedy by action of trespass, or upon the case, against the person and persons so wrongfully distraining, or either of them, his, her or their executors and administrators, and shall recover double the value of the goods and chattels so distrained and sold, together with full costs of suit.

IV. *And be it further enacted, by the authority aforesaid*, That upon any pound breach, or rescous, of goods or chattels distrained for rent, the person or persons grieved thereby, shall, in a special action upon the case, for the wrong thereby sustained, recover treble damages, with costs of suit, against the offender and offenders in any such rescous or pound breach, or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his or her use or possession.

V. *And be it further enacted, by the authority aforesaid*, That no goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall at any time hereafter, be liable to be taken by virtue of any writ of execution, or on any pretence whatsoever, unless the party so taking the same shall, before removal of the goods from off such premises, pay or tender to the landlord, or lessor thereof, or his agent, all the money or tobacco due for the rent of the said premises, at the time of taking such goods or chattels in execution.

VI. *Provided nevertheless*, That such rent arrear do not amount to more than one year's rent; and if more be due, then the party suing out such execution, paying or tendering

to such landlord or his agent, one year's rent, may proceed to execute his judgment : and the sheriff or officer serving the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money or tobacco so paid for rent, as the execution money.

VII. *And be it further enacted, by the authority aforesaid,* That where any landlord shall have sufficient grounds to suspect that his tenant will remove with his effects out of the county, before the expiration of his term, so as no distress for the said rent can be made, it shall be lawful for such landlord to go before any justice of the peace of the county where the lands leased do lie, and make oath what rent the tenant is to pay, and at what time the same will be due, and that he has just cause to suspect, and verily believes, such tenant will remove his or her effects out of the county before time of payment ; and thereupon such justice may, and is hereby empowered and required to issue an attachment against the goods and chattels of such tenant, returnable to his next county court ; and if such tenant shall not, at the time of serving such attachment, or before, or at such next court, enter into recognizance, with one or more sufficient sureties, for the payment of the said rent at the time it shall become due, it shall be lawful for such court, and they are hereby required to order the goods attached to be sold by the sheriff, at public auction, for money or tobacco, according to the reservation of the rent, to be paid at the time the rent shall become due, the purchasers giving good security for such payment, and to assign the bonds taken for the same, and the costs, to such landlord ; and the overplus of such sale, if any, besides the charges of attachment and sale, to return to the owner.

VIII. And that in case any lessee for life or lives, term of years, at will, or otherwise, of messuages, lands or tenements, upon the demise whereof, any rents are or shall be reserved or made payable, shall at any time fraudulently or clandestinely convey or carry off or from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of rent so reserved, it shall be lawful for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within ten days next after such conveying away or carrying off such goods and chattels, to take and seize the same wherever they shall be found, as a distress for the arrears of such rent, and the same to sell, in like manner as if they actually had

been distrained by such lessor or landlord, in and upon the demised premises.

IX. *Provided always*, That no goods or chattels so carried off and *bona fide* sold for a valuable consideration, before such seizure made, shall be afterwards liable to be so taken or seized for any arrears of rent.

X. *And be it further enacted by the authority aforesaid*, That any person or persons having rent in arrear, or due, upon any lease or demise for life or lives, may bring an action or actions of debt for such arrears of rent, in the same manner as if such rent were due, and reserved upon a lease for years.

XI. And that it shall be lawful for any person or persons having rent in arrear, or due, upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the respective leases, in the same manner as if such lease or leases had not been determined.

XII. *Provided*, That such distress be made within six months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

XIII. *Provided also, and it is hereby enacted and declared*, That nothing in this act contained shall extend or be construed, to let, hinder, or prejudice his majesty, his heirs and successors, in the levying, recovering, or seizing, any debts, fines, penalties, or forfeitures, due, payable, or answerable to his majesty, his heirs and successors ; but that the same may be levied, recovered, and seized, in the same manner as if this act had never been made.

XIV. *And be it further enacted, by the authority aforesaid*, That all and every other act and acts, clause and clauses, heretofore made for or concerning any matter or thing within the purview of this act, shall be and are hereby repealed.

XV. *And be it further enacted*, That this act shall commence and be in force from and immediately after the 10th day of June, which shall be in the year of our Lord one thousand seven hundred and fifty-one.

7. 1769, CHAP. IV, PAGE 6, CHAN. REV.

An ACT to regulate the practice of suing out and prosecuting Writs of Replevin, in cases of distress for Rents.

I. WHEREAS very great and unjust delays have arisen, from the suing out writs of replevin, in cases of goods dis-

trained for rent, contrary to the true intent and meaning of the act of the general assembly made in the twenty-second year of the reign of his late majesty, entitled "an act for the better securing the payment of rents, and preventing the fraudulent practices of tenants:" for remedy whereof, *be it enacted by the governor, council, and burgesses, of this present general assembly, and it is hereby enacted by the authority of the same,* That from and after the passing of this act, before any writ of replevin shall be granted, in case of goods and chattels distrained for rent, the person or persons praying such writ, shall enter into bond, with one or more sufficient securities, in the clerk's office, in the penalty of at least double the value of the rent distrained for, and costs of suit, to perform and satisfy the judgment of the court in such suit, in case he, she or they shall be cast therein; and if upon the trial of such suit, it shall be found that the rent distrained for was justly due, the party injured or delayed by suing forth the said writ, shall recover against the party suing forth and prosecuting the same, double the value of the rent in arrear and distrained for, with full costs of suit; to be recovered in the same manner as judgments are by law recovered on executing a writ of *feri facias*, where the clerk is directed to endorse on the back of the writ, no security to be taken.

II. *And be it further enacted, by the authority aforesaid,* That where any person shall suggest that the goods distrained are his or her property, and not the property of the tenant, nor held in trust for the use of the tenant in any manner whatsoever, and that the same in his or her opinion are not liable to such distress, he or she giving bond and security in manner herein before directed, may sue out a writ of replevin for such goods, but not otherwise; and in case the person or persons suing out the said writ shall be cast in such suit, judgment shall be given against him for double the value of the rent in arrear and distrained for, with full costs as aforesaid. And for the more speedy determination of all such writs of replevin,

III. *Be it further enacted, by the authority aforesaid,* That every such writ shall be returnable to the next court after the same shall be issued; and such court shall, at their next sitting after the return, cause an issue to be made up therein, which shall be tried at the following court, without waiting for its turn in the order of priority in regard to other suits.

IV. *Provided always,* That this act shall not extend to prevent the replevying goods or chattels distrained for rent, where

the tenant shall give bond and security for payment thereof at the end of three months, in the manner directed by the above mentioned act.

V. *Provided also*, That judgment shall and may be recovered on such last mentioned bond, in the same manner as on bonds taken upon executing a writ of *fiery facias*.

VI. *Provided always*, That the execution of this act shall be, and the same is hereby suspended until his majesty's approbation thereof shall be obtained.

PROCEEDINGS IN ACTIONS REAL.

1. STATUTE OF GLOUCESTER, 6 EDWARD I, CHAP. 1, A. D. 1278.

IT is provided that if disseisors do aliene the lands and have not whereof there may be damages levied, that they to whose hand such tenements shall come shall be charged with the damages, so that every one shall answer for his own time. And every person from henceforth shall be compelled to render damages where the land is recovered against him, upon his own intrusion or his own act.

2. 6 EDWARD I, CHAP. 2, A. D. 1278.

In what case nonage of the Plaintiff shall not stay an Enquest.

IF a child within age be holden from his heritage after the death of his father, cosin, grandfather, or great grandfather, whereby he is driven to his writ, and his adversary cometh into the court and for his answer alledgeth a feoffment, or pleadeth some other thing whereby the justices award an enquest, there whereas the enquest was deferred unto full age of the infant, now the enquest shall pass as well as if he were of full age.

3. 13 EDWARD I, [WESTMINSTER 2,] STAT. 1, CHAP. 4, A. D. 1285.

Warrantor may defend a suit, &c.

WHEN the wife being endowed loseth her dower by default, and tenants in free marriage by the law of England, or for term of life, or in fee tail, divers actions do concur for such tenants; when they must demand their land lost by default. And when it is come to that point that the tenants must be

compelled to shew their right, they cannot make answer without them to whom the reversion of right belongeth; therefore it is granted unto them to vouch to warranty as if they were tenants, if they have a warranty; and when the warrantor hath warranted, the plea shall pass between him that is seized and the warrantor, according to the tenor of the writ that the tenant purchased before and by which he recovered by default, and so from many actions at length they shall resort to one judgment, which is this, that the demandants shall recover their demand, or the tenants shall go quit. And if the action of such a tenant which is compelled to shew his right, be moved by a writ of right, though that the great assise or battail cannot be joined by the words accustomed, yet it shall be joined by words convenient, for when the tenant in that he sheweth his right which belongeth to him by the writ that he before purchased, instead of a demandant the warrantor may well defend the right of the tenant, which is accounted in place of the demandant as afore is said, and offer to defend the seisin of his ancestors by the body of his free-man, or put himself on the great assise and pray recognisance to be made whether he hath more right to the land in demand or else the party before named, or otherwise the great assise may be joined thus, *Tals defendit jus*, &c. and so the warrantor may defend the right and knowledge the seisin of his ancestor, and put himself on the great assise, &c. and pray recognisance to be made whether he hath more right in the aforesaid land as in that whereof he enfeofed such a man, or that such a one released and quit claimed, &c. or else the foresaid party.

4. 13 EDWARD I, CHAP. 7, A. D. 1285.

Admeasurement of Dower.

A writ of admeasurement of dower shall be from henceforth granted to a guardian, neither shall the heir when he cometh to full age be barred by the suit of such a guardian that sueth against the tenant in dower feignedly and by collusion, but that he may admeasure the dower after, as it ought to be admeasured by the law of England.

The act of 1796 makes provision for cases where the guardian is defendant—this act permits him to be plaintiff, and guards against his collusion in that capacity.

5. 13 EDWARD I, CHAP. 23, A. D. 1285.

Writ of Nuisance, &c. Casu consimili.

IN cases whereas a writ is granted out of chancery for the fact of another, the plaintiffs shall not henceforth depart from the king's courts, without remedy, because the land is transferred from one to another ; and in the register of the chancery, there is no special writ found in this case, as of a house, a wall, a market, but the writ is granted against him who levied the nuisance ; and if the house, wall, or such like, be aliened to another, the writ shall not be denied ; but from henceforth, where in one case a writ is granted in like case, when like remedy faileth, the writ shall be made as hath been used before : "*Questus est nobis et quod D. injuste, &c. levavit domum murum mercatum et alia uquæ sunt ad nocumentum,*" &c.

And if such things levied be aliened from one to another, the writ shall be thus : "*Questus est nobis et quod B. et C. levaverunt,*" &c.

And whensoever from henceforth it shall fortune in the chancery that in one case a writ is found, and in like case, falling under like law, and requiring like remedy, is found, none the clerks of the chancery shall agree in making the writ.

6. STATUTE DE DEFENSIONE JURIS, 20 EDWARD I, A. D. 1292.

WHERE one by the king's writ doth demand any tenements against tenant by the courtsie, in tail, in dower, or for term of life or of years, and the demandant sueth so far that the lands be in manner recovered, whereupon another, not party to the suit, cometh in before judgment given, and saith that he hath fee and right in those lands, and prayeth the court, that inasmuch as he hath come before judgment, ready to defend his tenement, and to make answer unto the demandant, that he may be admitted thereto, by force of a statute made by the king, that now is amongst other the last statutes made at Winchester ; by which statute, as well such as had no right as they which had right, often times, in the case before mentioned, falsely and in deceit of the court, did come in and pray to be received to make answer, that by their admission they might prolong the demandant from the judgment and seisin of his land, and to cause those demandants to plead anew, and so the demandants are greatly deferred in the case aforesaid, to recover their right in the king's court, by reason

of such malice, as well as by mistaking of the said statute, as for any other cause just and reasonable; and this is used and found often before our justices. Wherefore our lord the king, for to withstand all such malice, in the aforesaid case, and intending to provide a remedy therein, in his full parliament, and by his common council, hath ordained, and from henceforth commanded strictly to be observed, that when any before judgment in the aforesaid case, cometh in by a collateral title, and desireth to be received, before his receipt, he shall find sufficient surety (as the court will award) to satisfy the demandant of the value of the lands so to be recovered, from the day that he is received, to make answer until the time that final judgment be given upon the petition of the demandant; and if the demandant recover his demand, the defendant shall be grievously amerced, if he have whereof, and if he have not, he shall be imprisoned at the king's pleasure; and if he can prove his right as good as he affirmed at such time as he was received, he shall go quit.

7. 9 RICHARD II, CHAP. 3, A. D. 1385.

Writs of Error, &c.

IT is accorded and assented that if the tenant for term of life, tenant in dower, tenant by the curtesy of England, or tenant in tail, after possibility of issue extinct, be impleaded and plead to an inquest, and lose by the oath of twelve, or by default, or in other manner, that he to whom the reversion of the tenements so lost doth appertain at the time of such judgment given, his heirs or successors, shall have an action by writ of error, if error be found in the record of such judgment, as well in the life time of such tenants that so do lose as after their death; and if such erroneous judgment be reversed, the tenant which did lose by the first judgment, if he be in life, shall be restored to his possession of the tenements so lost, with the issues in the mean time; and the party pursuing to the arrearages of the rent, if any be due of the same tenements, and if such tenant be dead at the time of the judgment given upon such writ of error, that restitution of the said tenements be made to the party pursuing, with the issues after the death of the said tenant, together with the arrearages of the rent, if any to him were due in the life time of the tenant.

Provided nevertheless, That although the tenant which did so lose by the first judgment be in life, and the party pursuing will alledge that the same tenant was of *covin* and of assent of

the demandant which recovered that such tenements ought to be lost, that restitution of the same tenements be made to the party pursuing, with the issues and arrearages as afore is said, saving to such tenant his action by writ of *seire facias*, out of the same judgment so reversed or given, if he will traverse the *covin* and assent aforesaid, otherwise not.

8. 13 RICHARD II, CHAP. 17, A. D. 1389.

Reversioners may be received in suits against particular Tenants.

IT is accorded and assented that if any tenant for term of life, tenant in dower, tenant by the law of England, or in tail, after possibility of issue extinct, be impleaded, and he in reversion come into the court and prayeth to be received to defend his right at the day that the tenant pleadeth to the action, or before he shall be received to plead in chief to the action, without taking any delay by voucher, aid, prayer, nonage, or any other delay whatsoever ; and that days of grace be given by the discretion of the judges between the demandant and him that is received in such case, without giving the common day in plea of land.

Provided always, That they in reversion which pray to be received as before is said, shall find surety of the issues of the tenements demanded for the time that the same demandants be delayed after the said plea between the demandants and tenants, if the judgment pass for the demandant against them in reversion aforesaid, as well where the receipt is counterpleaded as where it is granted.

9. 21 HENRY VIII, CHAP. 3, A. D. 1529.

Plaintiffs in Assise may abridge their Plaints.

Be it enacted, That the plaintiff in every assise from henceforth may at his pleasure sever and abridge his plaint of any part or parts whereunto any bar is pleaded by moiety, in like manner as he or they might do in case the pleas in bar had been made and divided to any certainty or number of acres in the plaint, and that the plaint for the residue of the part or parts of the lands not abridged shall be and stand good and effectual in law.

ACTIONS PERSONAL, AND PROCEEDINGS THEREIN.

I. ACTS OF PARLIAMENT.

1. [STATUTE MARLBIDGE.] 52 HENRY III, CHAP.
23, A. D. 1267.

A Remedy against Accomptants. Farmers shall make no waste.

IT is provided that if bailiffs who ought to make account to their lords withdraw themselves, and have no lands nor tenements whereby they may be distrained, then they shall be attached by their bodies, so that the sheriff in whose bailiwick they be found, shall cause them to come and make their accounts.

II. Also, farmers during their terms, shall not make waste nor sale, nor exile of house, woods and men, nor of any thing belonging to the tenements that they have to farm, without special license had by writing of covenant, making mention that they may do it ; which thing if they do, and be thereof convict, they shall yield full damage, and shall be punished by amercement grievously.

2. [WESTM. 2.] 13 EDWARD I, STAT. 1, CHAP. 11,
A. D. 1285.

IF an accomptant found in arrear before auditors assigned to take the account, flee, and it be returned that he cannot be found, exigents shall go against him from county to county, until he be outlawed ; and such prisoner shall not be replevisable.

This is the clause alluded to in 25 Edward III, statute 5, Chap. 17.

3. 13 EDWARD III, CHAP. 30, A. D. 1285:

Special Verdicts.

IT is ordained that the justices assigned to take assises, shall not compel the jurors to say precisely whether it be a disseisin or not, so that they do shew the truth of the deed, and require the aid of the justices ; but if they of their own head will say that it is disseisin, their verdict shall be admitted at their own peril.

4. 2 EDWARD III, CHAP. 17, A. D. 1328.

Writ of Deceit.

IT is enacted that a writ of deceit shall be maintainable, and hold place as well in the case of garnishment touching plea of land where such garnishment is given, as in case of summons in plea of land.

5. 9 EDWARD III, CHAP. 3, A. D. 1335.

Action against Executors.

IN a writ of debt brought against divers executors, the same executors, nor any of them, shall have but one essoin, as the testator would have had; so that all the executors do present the person of the testator as one person. It is also enacted that though the sheriff do answer at the summons that some of them have nothing whereby they can be summoned, yet there shall an attachment be awarded upon them, and if the sheriff answer that he hath nothing whereby he can be attached, the great distress shall be awarded so that at the great distress returned upon them he or they that do first appear in court shall answer to the plaintiff; and although some of them do appear in court, and make default at the day that the great distress is returned upon the other, yet nevertheless he or they shall be put to answer that first appeared at the great distress returned; and in case the judgment pass for the plaintiff, he shall have his judgment and execution against them that have pleaded, according to the law heretofore used, and against all the other named in the writ, of the goods of the testator, as well as if they had pleaded. And it is to be understood that if any in such case will sue according to the law that hath been heretofore used, he may freely do it, notwithstanding this statute.

6. 25 EDWARD III, STAT. 5, CHAP. 17, A. D. 1350.

Process of Exigent shall be awarded in Debt, Detinue and Replevin.

IT is accorded that such process be made in a writ of debt and detinue of chattels and taking of beasts by writ of *capias* and by process of *exigent* by the sheriff's return, as is used in a writ of accompt—(Vide Stat. Westm. 2, chap. 11.)

7. 37 EDWARD III, A. D. 1363.

Idemptitate Nominis.

FOR the great mischiefs which often have happened and daily do come, because that escheators, sheriffs, and other of the king's ministers, do seize the lands, goods and chattels of many, because they bear the names of such as be outlawed for default of a good declaration of the surname; *It is ordained*, That if any complain him in such case, he shall have the writ of *idemptitate nominis*, in the manner as hath been used in time past; and if any man's lands, goods or chattels be seized in such case by escheator, sheriff, or other minister of the king, he shall find surety before the minister which hath the warrant to seize, to answer to the king of the value of such lands, goods and chattels, in case he cannot discharge him without taking any thing of the party; and if such minister do not the same, and be thereof attainted, the party shall have suit against such minister, and recover his double damages, and nevertheless he shall be grievously punished by the king.

8. 38 EDWARD III, A. D. 1363.

Penal Bonds.

WHEREAS divers people be bound in another court, out of the realm, by instrument and other manner, it is accorded, that all *such penal bonds* in the *third* person be void.

NOTE—As far as this act could relate to any bonds entered into in any court in the States of the Union, it was repealed by the federal constitution.

9. 6 RICHARD II, CHAP. 2, A. D. 1382.

Writs of Debt, Accompt, &c. shall be commenced in the Counties where the contracts were made.

TO the intent that writs of debt and accompt, and all other such actions, be from henceforth taken in their counties and directed to the sheriffs of the counties where the contracts of the same actions did rise, it is ordained and accorded, that if from henceforth in pleas upon the same writs, it shall be declared that the contract thereof was made in another county than is contained in the original writ, that then incontinently the same writ shall be utterly abated.

10. 2 HENRY IV, CHAP. 7, A. D. 1400.

Nonsuit.

WHEREAS in verdict found before any justice in assise of *novel, disseisin, mortdauncester*, or any other action whatsoever, the parties before this time have been adjourned upon difficulty in law, upon the matter so found, it is ordained and established, that if the verdict pass against the plaintiff, that the same plaintiff shall not be nonsuited.

11. 4 HENRY IV, CHAP. 23, A. D. 1402.

The Validity of Judgments.

IT is ordained and established, that after judgment given in the courts of our lord the king the parties and their heirs shall be thereof in peace until the judgment be undone by attain, or by error, if error there be, as hath been used by the laws, in the times of the king's progenitors.

12. 11 HENRY IV, CHAP. 3, A. D. 1409.

Records shall not be amended or impaired after Judgment inrolled.

IT is ordained and established, that the records and process of pleas real and personal, and of assises of *novel, disseisin, or mortdauncester*, and certifications, and of others, whereof judgment is given and inrolled, or things touching such plea, shall in no wise be amended or impaired by new entering of the clerks, or by the record or thing certified in witness or commandment of any justice, in no term, after that such judgment in such plea, is given and inrolled.

13. 8 HENRY VI, CHAP. 10, A. D. 1429.

Malicious Prosecution.

EVERY person indicted or appealed in one county, of treason, felony, or trespass in another county, after he shall be duly acquitted by verdict, shall have a writ and action upon his case, against every procurer of such indictments; and like process shall be upon and in the same writ, as in a writ of *trespass done with force and arms; and if such procurer be attainted in this behalf, the plaintiff shall recover his treble damages.

* This means, that he shall be entitled to process of outlawry, not that the writ shall be *writ armis*.

14. 9 HENRY VI, CHAP. 4, A. D. 1430.

An Idemptitate Nominis maintainable by Executors.

FOR that before this time many outlawries have been pronounced against divers of the king's leige people, as well before the statute of additions made at Westminster, the first year of king Henry the fifth, as sithence, in respect of which outlawries, the bodies of other persons having such and like names as they had which were outlawed, indeed, have been taken and imprisoned, and their goods and chattels for this cause seized by the escheators of the king and his noble progenitors, and although that by the common law of the realm, a writ of *idemtitate nominis* hath been maintainable for the same person which in the form aforesaid, was molested and grieved; nevertheless, if any person of the said leiges, having like name as any other person of the same liege people, which was outlawed, in deed had made his executors and died, often it happened that by malice and subtil imagination, the goods and chattels of such testator which had the same name as he had which was outlawed, indeed were seized and escheated to the hands of our lord the king, and of his progenitors, in retardation of the execution of the testament of every such testator, for the doubt which hath been whether any executor may by the common law have a writ of *idemtitate nominis* or not. Wherefore to take away and remove all such ambiguities and doubts in this case hereafter of the assent and advice aforesaid, and at the special request of the said commons, it is ordained and established by authority of this parliament, that a writ of *idemtitate nominis* be granted and made good and maintainable for the executors of every testator, to the same effect that the same action of *idemtitate nominis* was maintainable before this parliament, for any person himself, which was or might have been molested or grieved because or by colour of any such outlawry.

15. 10 HENRY VI, CHAP. 4, A. D. 1432.

False Entries.

FOR that divers of the king's liege people before this time have been outlawed and greatly vexed and disquieted in divers suits, as well before the king in his bench, as in the common bench, in the records of which suits, the entries have been made that the plaintiffs in the same suits *obtulerunt se in propria persona sua*, where the said plaintiffs never appeared to such suits, nor had knowledge of the same, in great mischief

of the said liege people, if remedy be not provided in this behalf; our lord the king, willing in this case, to provide remedy, hath ordained and established, by authority of this present parliament, that no *fyliſer exigenter*, nor any other officer, from henceforth, shall make such entry in any manner of suit, except that the plaintiff in the same suit, before that such entry be made, do appear in his proper person, before some of the said justices of the place where the plea is or shall be depending, and there he shall be sworn upon a book, that he is the same person in whose name the said suit is sued, or that some other credible person of the king's counsel maketh such oath for him.

Made perpetual by 18 Henry 6, Chap. 9.

17. 6 HENRY VIII, CHAP. 4, A. D. 1514.

An Outlawry may be avoided without Writ of Error.

IF any outlawry hereafter be had or promulged against any person or persons in any action personal, in any foreign county, and no writ of proclamation awarded and returned, then every such outlawry to be utterly void and of no effect nor force in law; and all outlawries had contrary to this act, be avoided by averment, without suing of any writ of error.

18. 2 & 3 PHILIP AND MARY, CHAP. 7, A. D. 1555.

The property of a stolen Horse shall not be altered by sale or Exchange.

IF any horse, mare, gelding or colt that is or shall be thievishly stolen or taken away, shall be sold, given, exchanged or put away in any fair or market, the owner of every such horse, mare, gelding or colt shall and may by force of this statute seize or take again the said horse, mare, gelding or colt, or have an action of detinue or *replevin* for the same, any sale, gift, exchange or putting away of such horse, mare, gelding or colt in anywise notwithstanding.

N. B. The statute contains one exception, but that exception cannot exist in this country: it is where an horse is sold with abundant formality in a fair or market overt. By the description given of the markets, and the officers named, it appears that they were markets established by some legal authority for the sale of horses. It is likewise observable that this statute gives an action of *replevin* as well as detinue.

II. ACTS OF VIRGINIA.

19. 1753, CHAP. 1, SEC. 23, PAGE 298, V. L.

WHERE a plaintiff in the general court will proceed to the outlawry of any defendant in any civil action, he may,

upon the *pluries capias* or *capias ad satisfaciendum* returned *non est inventus*, sue out, and the clerk of the general court is hereby empowered and required, upon request, to issue an *exigent* and proclamation, returnable upon either of the return days aforesaid, to the end that such defendant may be outlawed thereupon.

20. 1755, CHAP. 2, SEC. 2 & 3, PAGE 323, V. L.

II. *BE it therefore enacted by the Lieutenant-Governour, Council and Burgesses of this present General Assembly, and it is hereby enacted by the authority of the same, That in any action which hath been or shall be commenced, and is or shall be depending, for the recovery of any sterling money, in any court of record in this dominion, wherein the plaintiff or plaintiffs shall recover, such court shall have power and are hereby directed, by rule to be entered at the foot of their judgment in such action, to order such judgment to be discharged or levied in current money, at such a difference of exchange as they shall think just, any law, usage or custom, to the contrary thereof in any wise notwithstanding.*

III. *And be it further enacted, That if any person shall, in any suit hereafter to be brought, declare for sterling money, except where the debt or duty is payable in sterling, the plaintiff in every such suit shall be nonsuited; and if any person shall, after the passing of this act, take a bond, obligation, or note, payable in sterling, for any current money debt, and shall bring any suit thereon, the court before whom such suit shall be tried, upon proof being made thereof, shall order the judgment to be discharged or levied in current money, at the rate of twenty-five per cent.*

ESCHEATORS.

1. 18 HENRY VI, CHAP. 7, A. D. 1439.

Penalty on an Escheator for failing to return an Inquisition.

IT is ordained that in case that any escheator take any office before him, and return not the same office in the chancery, or in the king's exchequer, in the month after the taking of the same, he shall incur the pain of forty pounds.

2. 23 HENRY VI, CHAP. 17, A. D. 1444.

Escheators, their Duties, Fees, &c.

IT is ordained that every escheator shall take his inquest of office by virtue of the writs *diem clausit extremum*, and all other writs within the month after the delivery of such writs, and also that all such inquisitions be taken in good towns and open places, and that none of them shall take privily nor openly by him nor by any person, for the execution of any such writs in one county, nor by the occasion thereof, above the sum of six shillings and eight pence, or thirteen shillings, or above where his labour and costs shall require it, so that the sum which he so shall take do not exceed forty shillings for the execution of any such writ in one county; and if any escheator do contrary to any of the premises, then he shall forfeit the sum of forty pounds, and the king shall have half the said forfeiture of forty pounds, and the party which in this behalf will sue for the king and himself, shall have the other half of the same.

3. 1 HENRY VIII, CHAP. 9, A. D. 1509.

Escheators.

IF any escheator hereafter return or put into any of the king's courts, any inquisitions or offices, concerning lands, tenements or other hereditaments, not found nor presented by the oaths of twelve, and indented, and by them sealed, that then the said escheator forfeit, for every such office or inquisition so returned and put into any of the said courts, one hundred pounds, to the party or parties grieved by any such inquisition or office.

And every escheator (after a jury or inquest before him sworn, be ready to give their verdicts and present the same,) shall receive the same verdict, without further delay, on pain of one hundred pounds.

4. 2 & 3 EDWARD VI, CHAP. 8, A. D. 1548.

Escheator's Inquests.

BE it enacted, That where any inquisition or office is or shall be founden by these words, or the like, "*Quod de quō vel de quibus tenementa prædict. tenentur ignorant*," or such like, that in such case, such tenure, so uncertainly founden,

"*De quo vel quibus tenementa prædict. tenentur ignorant*," shall not be taken for any immediate tenure of the king, but in such cases a *melius inquirendum* shall be awarded, as hath been accustomed in old time.

Where any person or persons are enabled by act of parliament, to have any traverse, and shall pursue his or their traverse, then he or they that shall pursue such traverse, shall sue one or several writs of *scire facias*, as the case may require, against all and singular such person and persons as shall have interest by the king or by his patentee or patentees, in like manner and form as is requisite upon petitions heretofore pursued: *Provided also*, that if after any judgment shall be given upon any traverse, it shall appear by any matter of record, that the king hath any other former title, right, or interest in the manors, lands, tenements or other hereditaments mentioned in the same traverse, that then the same title, right and interest shall be saved to the king, the said traverse and judgment thereupon given, in anywise notwithstanding:

CHANCERY PROCEEDINGS.

1. 17 RICHARD II, CHAP. 6, A. D. 1393:

Chancery.

FORASMUCH as people be compelled to come before the king's council, or in the chancery, by writs grounded on untrue suggestions; the chancellor for the time being, presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages, according to his discretion, to him who is so troubled unduly as afore is said.

2. 15 HENRY VI, CHAP. 4, A. D. 1436:

Chancery.

FOR that divers persons before this time have been greatly vexed and grieved by writs of *subpoena* purchased for matters determinable by the common law of this land, to the great damage of such persons so vexed in subversion and impediment of the common law aforesaid, our lord the king doth command, that the statutes thereof made shall be duly observed, according to the form and effect of the same, and that no writ of *subpoena* be granted from henceforth, until

surety be found to satisfy the party so vexed and grieved for his damages and expences, if so be that the matter cannot be made good which is contained in the bill.

3. 31 HENRY VI, CHAP. 9, A. D. 1452.

A remedy for a woman enforced to be bound by a statute or obligation.

WHEREAS in all parts of this realm divers people of great power, moved with insatiable covetousness, against all right, humanity, integrity and good conscience, have sought and found new inventions, and them continually do execute, to the danger, trouble and great abusing of all ladies, gentlewomen and other women sole, having any substance of lands, tenements or other moveable goods within this realm, perceiving their great weakness and simplicity, will take them by force, or otherwise come to them seeming to be their great friends, promising them their faithful friendship, and so by great dissimulation, or otherwise, get them into their possession, conveying them to such places where the said offenders be of most power; and when any woman by such means, or by other means, be in their government, the said evil disposed persons will not suffer them to go at large and be at their liberty, until they will bind themselves to the said offenders, or other person or persons to their use, in great sums, by obligation or obligations, as well simple as conditional, or by obligation or obligations of statute merchant, before a mayor or bailiff having power to take such recognizances.

II. Also, they will many times compel them to be married by them contrary to their own likings, or otherwise they will levy the said sum or sums on their lands and goods, and put their person or persons in great danger, to their great damage, which hath been and is likely to be an universal prejudice to the law of holy church and the law of this realm, unless due remedy thereupon be provided: our said lord the king, considering the premises, hath ordained and established, by authority of this present parliament, that in all such cases aforesaid the party bound may have a writ out of the chancery, containing all the matter of their unreasonable entreaty, directed to the sheriff of the county where any such offences were so done, or after shall be done, commanding him that he by force of this writ make proclamation in the full county, and in the next county court after the receipt of said writ, that the person or persons contained in said writ shall appear at a certain

day and place prefixed in said writ, before the chancellor of England for the time being, or otherwise before the justices of the assise, or else before some other notable person in England, to be assigned by the chancellor of England for the time being; at which day and place, if the party appear, that then the said chancellor of England, justice, or other person so to be assigned by the chancellor for the time being, by virtue of this ordinance, shall duly examine the said parties upon the premises; by which examination, if they can find the said obligation or obligations, or any of them so to be made as aforesaid, that then the said obligation or obligations, and all process and execution sued or to be sued thereupon shall be void and of no force or effect; and if it be found by examination before them that the said obligation or obligations, or any of them, were made or shall be found to be made for a true duty, and by no such means as afore is said, that then the said obligation or obligations, and all the process and execution sued or to be pursued thereupon, shall stand good and effectual. And if it be so that the person or persons in such writ named, or to be named, against whom any such letters or writs hereafter shall be sued, make default at the day and place limited in the same writ or writs, then all such obligation or obligations as before specified and declared, and in the said writ or writs expressed, declared and specified, and all manner of process and execution sued or to be sued thereon, shall be void and of no force nor effect.

SHERIFFS.

I. ACTS OF PARLIAMENT.

1. 13 EDWARD I, CHAP. 39, A. D. 1285.

Sheriffs to give receipts for Writs delivered to them. Not to return Resistance, &c.

SUCH as do fear the malice of sheriffs, shall deliver their writs original and judicial, in the open county, or in the county where the collection of the king's money is, and may take of the sheriff or under-sheriff, being present, a bill wherein the names of the demandants and tenants mentioned in the writ, shall be contained, and at the request of him that delivered the writ, the seal of the sheriff or under-sheriff shall be put to the bill for a testimony, and mention shall be made of the day of the deliverance of the writ.

They [the sheriffs] make many times false answers, returning that they could not execute the king's precept, for the resistance of some great man : wherefore, let the sheriffs beware from henceforth, for such manner of answers redound much to the dishonour of the king ; and as soon as his bailiffs do testify that they found such resistance, forthwith, all things set apart, (taking with him the power of the shire,) he shall go in proper person to do execution ; and if, per case, the sheriff when he cometh, do find resistance, he shall certify to the court the names of the resisters, aiders, consenters, commanders and favourers ; and by a writ judicial, they shall be attached by their bodies, to appear at the king's court ; and if they be convict of such resistance, they shall be punished at the king's pleasure.

2. 2 EDWARD III, CHAP. 5. A. D. 1328.

Writs may be delivered to a Sheriff any where in his County, and he shall receipt for the same.

IT is accorded and established that at what time or place in the county, a man doth deliver a writ to the sheriff, or to the under-sheriff, that they shall receive the same writs, and make a bill after the form contained in 13 Ed. I, Stat. 1, Chap. 39.

II. ACTS OF VIRGINIA.

3. 1764, CHAP. 6, SEC. 7, 8 & 9, PAGE 448, V. L.

VII. *And be it further enacted*, That where any slaves shall be taken in execution and sold, the names of such slaves shall be certified on the back of such execution, and shall be returned to and recorded among the records of the court where such execution shall issue.

VIII. And whereas some doubts and disputes have arisen whether the sheriffs are entitled to any and what commissions upon the amount of debts due from persons either committed to their custody in court or taken upon executions, and who have afterwards taken the benefit of the act of assembly made for the relief of insolvent debtors, and been discharged as such, or who, having remained in prison twenty days, are discharged by the sheriff for want of security for the prison fees : For settling and putting a stop to any further disputes thereon, *Be it further enacted by the authority aforesaid*, That from and after the passing of this act, it shall not be lawful for the sheriffs, or other officers, to demand, receive

or take, of or from any creditor or suitor, at whose suit or instance any debtor shall be committed to his custody by the court, or shall be taken in execution, and shall afterwards be discharged, by taking the oath of an insolvent debtor, or for want of security for the prison fees, any commissions upon the amount of the debt for which such insolvent was in custody as aforesaid, except on the amount of the effects mentioned in the schedule delivered in by such debtor, nor any other fees or perquisites than such as are already allowed by law upon the commitment, releasement, and for the maintenance of such debtor.

IX. And whereas it is represented that some sheriffs have demanded commissions upon the amount of the penalties of bonds, or other writings, on which judgments have been obtained and executions issued, which is altogether unreasonable and unjust : *Be it further enacted*, That it shall not hereafter be lawful for the sheriffs, or other officers, to demand, receive or take, any such commissions upon the penalties mentioned or expressed in executions delivered to them to be executed, but upon the sum only, by the payment of which such execution is directed to be discharged, from the person against whom such executions shall be issued, any former custom or usage to the contrary thereof, in any wise notwithstanding.

4. ACTS OF MAY 1780, CHAP. 11, SEC. 1 & 2, CHAN.
REV. PAGE 127.

I. *BE it enacted*, That where the sheriff of any county heretofore hath, or shall hereafter appoint any person to be his under-sheriff, to collect the taxes required by law in his county, and such under-sheriff shall neglect or refuse to account for and pay such taxes to the sheriff under whom he hath been or shall be appointed, or to the treasurer at the time appointed for paying the same, it shall and may be lawful for the general court, or court of the county whereof he hath been, now is, or shall be sheriff, upon motion to them made by such sheriff, to give judgment against such under-sheriff and his securities, their heirs, executors and administrators, for all the money wherewith he shall be chargeable, and twenty per centum interest thereon, and to award execution for the same, provided that such under-sheriff and his securities have ten days previous notice of such motion.

II. *Provided also*, That no execution shall be issued against an under-sheriff and his securities, for the twenty per centum,

unless judgment shall have been obtained against the sheriff for the same.

5. 1785, CHAP. 38, SEC. 4 & 5.

IV. *AND be it enacted*, That the clerks of the high court of chancery, court of appeals, and general court, to whom the fees, formerly allowed to the secretary, are now payable, shall deliver their tickets to the respective sheriffs annually, before the first day of May, and the sheriffs shall receive and collect the same, and shall distrain and make sale of the debtor's slaves, goods, or chattels, for all such tickets as shall remain unpaid after the first day of July in any year. And if the said sheriffs shall fail to pay the said fees to the respective clerks, at their offices in Richmond, or such town or place as the treasury may be kept at, by the fifteenth day of September annually, abating ten per cent. for collecting, and making an allowance for insolvencies, and non-residents having no estate within the county, which shall be accounted for on oath; the said clerks, or either of whom, upon motion made in the general court, or court of any county in which the sheriff failing to make payment as aforesaid may be found, may demand judgment against him for all fees wherewith he shall be chargeable by this act; and such court respectively shall enter judgment accordingly, provided the sheriff have ten days notice of such motion; and that judgment may be obtained as aforesaid against any under-sheriff who may fail to add the name of his principal to the receipt for such fees.

V. *And be it further enacted*, That the executors or administrators of any such sheriff, or under-sheriff, shall be liable to judgment as aforesaid for the fees received, to be collected by their testator or intestate, and accounted for. That every receipt for fees, produced in evidence on such any motion, shall be deemed to be the act of the person subscribing it, unless he shall deny the same upon oath.

6. 1787, CHAP. 40.

An ACT for the more speedy recovery of Debts due to this Commonwealth.

Passed January the 7th, 1788.

SECTION 1: *BE it enacted by the general assembly*, That lands and tenements shall and may, by virtue of writs of *fieri facias*, be taken and sold in satisfaction of all judgments to be hereafter obtained on behalf of the commonwealth, against

any sheriff, coroner, or other public collector, or against his or their security or securities, provided that the same shall not extend to any such security or securities who shall have become so before the passing of this act.

Sec. 2. Every judgment obtained against any sheriff, coroner, or other public collector, shall bind the property of the lands and tenements of such public debtor from the date thereof.

Sec. 3. When the goods and chattels taken in execution to satisfy a judgment of the commonwealth by virtue of a *feri facias*, shall not in the opinion of the officer levying the same be sufficient to satisfy the debt with damages and costs, the sheriff or other officer shall at the same time give public notice at the churches and meeting-houses, if any there be, and courthouse of his county on the next court day, and shall moreover give notice to the owner, if he be in the county, or otherwise to his agent, if any such be known, at some time appointed in the notice, not less than ninety nor more than ninety-six days from the time of levying the execution, that the said lands and tenements will be exposed to sale by auction on the premises, or at such other place in the county, as the owner shall by writing under his hand delivered to the officer, direct.

Sec. 4. If the public debtor against whom a judgment shall be entered, have several parcels of land which lie in one and the same county, he or his agent may by writing under his hand, at any time before the day of sale, require the sheriff or officer to whom a writ of *feri facias* upon the judgment shall be directed to make the debt or damages and costs of such of the said parcels of land, as the owner or his agent shall think proper; and if the parcels lie in different counties, the clerk shall and may at the like request in writing, direct the *feri facias* to the sheriff or officer of any county which the party or his agent, making oath or solemn affirmation that he hath lands there, shall particularly mention at any time before the writ shall be delivered to the officer. And if the debt, damages and costs, be made of any other parcel of land, or of land lying in any other county than that mentioned in such written requisition, the sale of such other parcel of the land in such other county, shall be void. If the owner of the land, before or at the day of sale, shall not make payment of the debt due to the public, the sheriff or officer shall proceed to sell the said lands and tenements, or such estate and interest as the party convict shall have therein, or so much thereof as will be sufficient.

laid off in one entire parcel, if it may be done, in such place and manner as he or his agent, if he think proper, shall direct, for ready money, or other property, as the demand may be, and the costs ; but if the estate cannot be sold for three-fourths of its value in the opinion of the valuers of the county, he shall sell the same upon three months credit, taking bond of the purchasers with sufficient surety or sureties, for payment to the chief magistrate of this commonwealth for the time being. Every bond thus taken, shall mention on what occasion the same was taken, and shall by the sheriff or officer be immediately returned to the clerk's office from whence it issued, there safely to be kept, and when due, execution thereon may be awarded in the same manner, and on the same conditions that executions are now awarded on replevy bonds, and shall in like manner be endorsed by the clerk that no security is to be taken.

Sec. 5. In all sales of lands by virtue of an execution, the sheriff or other officer shall convey the same to the purchaser at his costs, by deed in writing, indented, sealed, and recorded, as the laws direct for other conveyances of land, which deeds shall recite the execution, purchase, and consideration, and shall be effectual for passing to the purchaser all the estate and interest which the debtor had and might lawfully part with in the lands.

Sec. 6. If the lands and tenements, goods and chattels of any sheriff, coroner, or other public collector, are insufficient to satisfy the debt, damages and cost due to the public, judgment shall be obtained against his security or securities in the same summary way that judgment may by law be obtained against his or their principal, and the lands and tenements, goods and chattels of such security or securities, except as before excepted, shall be taken in execution to satisfy the balance of such debt, damages and costs, in the same manner as the lands and tenements, goods and chattels of his or their principal may be taken and sold agreeable to this act.

Sec. 7. In every writ of *fieri facias* upon judgments hereafter to be obtained by the commonwealth against any sheriff, coroner, or other public collector, after the words "We command you that of the," the clerk from whose office such writ shall issue, shall insert the words "Lands and tenements," and conform the subsequent part of such writ thereto.

Sec. 8. And whereas large sums of money are retained in the hands of sheriffs and other public collectors to the great injury of the commonwealth: For remedy whereof, *Be it en-*

acted, that where the property of any sheriff, coroner, or other public collector, or their securities, have been taken in execution to satisfy a judgment obtained by the commonwealth, and the same were not sold for want of buyers, and return thereon hath been made to that effect, or where the property of any sheriff, coroner, or other public collector, or their securities, have been exposed to sale by virtue of any writ of *venditioni exponas* to satisfy a judgment obtained by the commonwealth, and could not be sold for want of buyers, and return hath been made to that effect, in either of the above cases it shall and may be lawful for the executive, and they are hereby authorised and required, to direct the officer to whom any subsequent process in either of the above cases ought to issue, provided such property cannot be sold agreeable to the directions of such subsequent process, to cause such property to be removed to such place in any adjacent county as the executive may direct, and there to be sold for money or government securities on such terms and in such proportions as they shall judge expedient, provided that if such property will not sell for three-fourths of its value in the judgment of the valuers of the county where the sale shall be made, the sheriff or other officer shall sell the same on three months credit, and shall take bonds in the same manner, and the like proceedings shall be had thereon, as is herein before directed in cases of bonds taken on the sale of lands and tenements sold by virtue of this act.

Sec. 9. In every case where any writ of *feri facias* or *venditioni exponas* issues against the estate of a sheriff on behalf of the commonwealth, if by law the same ought to be directed to a sheriff, such writ or writs shall be executed by the high sheriff. In like manner where any writ of *feri facias* or *venditioni exponas* shall hereafter issue at the instance of the commonwealth against the estate of any sheriff, coroner, or other public collector, or their securities, and the goods and chattels of such debtor cannot be sold for want of buyers, the executive shall direct the property to be removed and sold as above directed in the cases of such sheriffs, coroners, public collectors, and securities, whose property has not been sold for want of buyers.

Sec. 10. It shall be the duty of the solicitor-general forthwith to acquaint the executive when their interposition is, or hereafter may become necessary to the carrying this act into effect.

Sec. 11. And whereas there is reason to suspect fraudulent practices have prevailed in the sale of estates of public debtors, to prevent such practices in future, *Be it enacted*, that the solicitor-general, immediately on the return of any process which he shall suspect was fraudulently executed, shall give notice thereof to the executive, whose duty it shall be to direct the attorney of the commonwealth for such county, to file an information thereupon, in which like proceedings shall be had as in other cases of information, and if it shall appear that such sale was fraudulently made, the property of any thing thus fraudulently sold shall not be changed, but remain subject to the demand of the commonwealth; and the officer who executed such process, if he be concerned in such fraud, shall ever after be rendered incapable of being appointed to any office of honor or profit.

Sec. 12. And whereas sheriffs and other public collectors in some instances have proceeded to collect the public revenue without having entered into bond with security for the faithful performance of that duty, which cannot be recovered from such collectors except by the tedious process of law: For remedy whereof, *Be it enacted*, that every sheriff or other public collector who may have attempted the collection of any of the different species of taxes in any county or corporation in this state, shall be liable to a judgment and execution for the same sum, and in the same summary way as if such sheriff or other public collector had actually given security agreeable to law.

Sec. 13. In all executions founded upon judgments heretofore obtained, where it may be necessary to remove any property by virtue of this act, the extra expences attending such process, shall be discharged by the commonwealth, but in all executions upon judgments hereafter to be obtained, such additional expences shall be paid by the owner of the property, and taxed in the costs of the prosecution.

Sec. 14. *And be it further enacted*, That no person whatsoever, shall be capable to serve or execute the office of under-sheriff or deputy sheriff for any longer time than two years, in any period of four years, unless he shall produce to the court of his county, satisfactory proof of his having collected and accounted for the taxes assigned to him by his former principal, *Provided*, that nothing herein contained shall be construed to prevent any under-sheriff now in office from serving the time that his principal shall be in office.

COMMON INFORMERS.

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7. 1788, CHAP. 74, SEC. 5.

V. AND whereas it is just and expedient that securities should have the same rights and remedy against the lands of their principals, as the commonwealth would have had, but for the proceeding against such securities: *Be it further enacted*, That wheresoever the lands of any sheriff or collector would have been bound for any debt due to the commonwealth, they shall be bound in like manner to the security or securities, who may have paid the whole or a part of such debt; and it shall be lawful for the general court to award a like execution against the said lands, on the motion of such securities, to that which would have been issued in behalf of the commonwealth. But ten days previous notice of such motion shall be given to the principal, his heir or devisee, as the case may be.

COMMON INFORMERS.

1. 18 ELIZABETH, CHAP. 5, A. D. 1576.

Common Informers.

FOR redressing of divers disorders in common informers, and for better execution of penal laws, *Be it enacted*, That every informer upon any penal statute, shall exhibit his suit in proper person, and pursue the same only by himself, or by his attorney, in court; and that none shall be admitted or received to pursue against any person or persons upon any penal statute, but by way of information or original action, and not otherwise, nor shall have nor use any deputy or deputies at all; and upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof into any office, or to any officer which lawfully may receive the same, without any manner of ante-date thereof to be made, and that the same information be accounted and taken to be of record from that time forward, and not before: *And be it likewise enacted, for the consideration aforesaid*, That no process be sued out upon any such information, until the information be exhibited in form aforesaid; and that upon every such process shall be endorsed as well the party's name that pursueth the same process, as also the statute upon which the information in that behalf made, is grounded; and that every clerk making out process con-

trary to the tenor and provision of this act, shall forfeit and lose forty shillings for every such offence, one half to the queen's majesty, her heirs and successors, and the other half to the party against whom any such defective process shall be awarded, to be recovered in any court of record, by action of debt or information.

And be it further enacted, That if any person or persons shall offend in suing out process contrary to the true intent and meaning of this statute, that then, he or they so offending, being thereof lawfully convicted, shall, from and after such conviction, forever be disabled to pursue or be plaintiff or informer in any suit or information on any statute popular or penal, and shall also, for every such offence, forfeit and lose ten pounds of lawful English money, the one half thereof to the queen's majesty, her heirs and successors, and the other half to the party grieved thereby, to be recovered in any court of record, by action of debt or information.

Provided always, and nevertheless be it enacted, That it shall and may be lawful to and for any person or persons grieved by means of any manner of maintenance, champerty, buying of titles, or imbracery, to pursue upon any of the statutes provided and set forth against maintenance, champerty, buying of titles, or imbracery, as he or they might have done before the making of this act, any thing in this act contained, to the contrary notwithstanding.

Provided also, That this act shall not restrain any certain person, body politic or corporate, to whom, or to whose use, any forfeiture, penalty or suit, is or shall be specially limited or granted by virtue of any statute, and not generally to any person who will sue for the same; but that every such certain person, body politic or corporate, may sue, inform and pursue, as if this act were never had nor made.

2. 31 ELIZABETH, CHAP. 5, A. D. 1589.

Informers.

BE it enacted by the authority of this present parliament, That in any declaration or information at any time after twenty days after the end of this session of parliament, to be had, brought, sued or exhibited, the offence against any penal statute shall not be laid to be done in any other county but where the contract, or other matter alledged to be the offence, was in truth done, and that every defendant in such action or information shall and lawfully may traverse and alledge that the offence supposed by the same suit to be committed, was

not committed in the county where such offence is alledged, which being tried for the defendant, or if the plaintiff be thereupon nonsuit in his information or suit, that then the plaintiff shall be barred in that action or information, any law or use to the contrary notwithstanding. *Provided always*, that this act, nor any thing herein contained, shall extend to the laying or alledging of any offence in any declaration or information for or concerning any champerty, buying of titles or extortion.

[The provisions so often repeated in the Virginia acts of assembly, and copied by Kentucky, "That the penalties given may be recovered in any court of record in this colony or commonwealth," are predicated on this statute. This statute applies where no such provision is made.]

And be it further enacted, That all suits, bills or informations which shall be had, sued or commenced for any forfeiture, upon a penal statute made, the benefit and suit whereof is or shall be by the said statute limited to the queen, her heirs and successors, and to any other who will prosecute in that behalf, shall be had, brought or commenced by any person that may lawfully pursue for the same as aforesaid, within one year next after the offence committed or to be committed against the said statute; and in default of such pursuit, then the same shall be had, sued or exhibited for the queen's majesty, her heirs or successors, at any time within two years after that year ended.

[We have a statute limiting the time of bringing suits in penal statutes in the name of the commonwealth alone, but none where the suit is in the name of a common informer, or any other person jointly with the commonwealth.]

EXECUTIONS.

1. [WESTM. 2.] 13 EDWARD I, STAT. 1, CHAP. 18,
A. D. 1285.

He that recovereth Debt, may sue Execution by Fieri Facias or Elegit.

WHEN debt is recovered or knowledged in the king's courts, or damages awarded, it shall be from henceforth, in the election of him that sueth for such debt or damages, to have a writ of *fieri facias* unto the sheriff, to levy the debt of the lands and goods, or that the sheriff shall deliver to him all the chattels of the debtor (saving only his oxen and beasts of the plough) and the one half of his land, until the debt be leyied upon a reasonable price or extent; and if he be put

out of that tenement, he shall recover by a writ of *novel disseisin*, and after by a writ of *re-disseisin*, if need be.

2. 13 EDWARD I, CHAP. 45, A. D. 1285.

Executions.

FROM henceforth it is to be observed, that those things which are found enrolled before them that have record or contained in fines, whether they be contracts, covenants, obligations, services or customs knowledged, or other things whatsoever enrolled, wherein the king's court, without offence of the law and custom, may execute their authority from henceforth, they shall have such vigour that hereafter it shall not need to plead for them ; but when the plaintiff cometh to the king's court, if the recognizance or fine levied be fresh, that is to say, levied within the year, he shall forthwith have a writ of execution of the same recognizance made.

And if the recognizance were made, or the fine levied of a further time past, the sheriff shall be commanded that he give knowledge to the party of whom it is complained, that he be afore the justices at a certain day, to shew if he have any thing to say why such matters enrolled or contained in the fine, ought not to have execution ; and if he do not come at the day, or peradventure do come and can say nothing why execution ought not to be done, the sheriff shall be commanded to cause the thing enrolled or contained in the fine, to be executed.

ADMINISTRATION.

1. 21 HENRY VIII, CHAP. 4, A. D. 1529.

By this act the *part* of the executors who take upon themselves the execution of the will, may sell any land devised to be sold by the testator, as is provided by our act of assembly. The following paragraph is inserted to shew that an administrator *cum testamento annexo*, has no more authority given him by act of parliament, to sell lands devised to be sold, than he has by our act of assembly.

2. 21 HENRY VIII, CHAP. 5, A. D. 1529.

IN case any person die intestate, or that the executors named in such testament refuse to prove the said testament, then the said ordinary or other person or persons having authority to take probate of testaments, shall grant administration of the *goods* of the testator or person deceased, to the widow of the same person deceased, or next of kin, or to both, as by the discretion of the said ordinary shall be thought good.

FRAUDULENT ADMINISTRATION. 535

taking surety of him or them for the true administration of the *goods, chattels and debts* which he or they shall be so authorised to minister.

FRAUDULENT ADMINISTRATION.

43 ELIZABETH, CHAP. 8, A. D. 1601.

An ACT against fraudulent administration of Intestates' Goods.

FORASMUCH as it is often put in use, to the defrauding of creditors, that such persons as have the administration of the goods of others dying intestate committed unto them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate and not of kin to the intestate, from whom themselves and others by their means, do take deeds of gift and authorities by letter of attorney, whereby they obtain the estate of the intestate into their hands and yet stand not subject to any debts owing by the same intestate, and so the creditors by lack of knowledge of the place of the habitation of the administrator, cannot arrest him nor sue him, and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods the value he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts.

Be it enacted by the authority of this present parliament, That every person and persons that shall hereafter obtain and receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt, of the value of the same goods or debts to him owing by the intestate at the time of his decease), shall be charged and chargeable as execution of his own wrong, and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself, allowance of all just and principal debts, upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful execu-

tors or administrators, may and ought to have and pay by the laws and statutes of this realm.

FRAUDULENT CONVEYANCES.

27 ELIZABETH, CHAP. 4, A. D. 1585.

Fraudulent Conveyances.

BE it ordained and enacted by the authority of this present parliament, That all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements, or other hereditaments whatsoever, had or made any time heretofore sithence the beginning of the queen's majesty's reign, that now is, or at any time hereafter to be had or made, for the intent and purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall afterwards purchase in fee simple, fee tail, for life, lives or years, the same lands, tenements and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity, in or out of the same, or any part thereof, shall be deemed and taken only as against that person and persons, bodies politic and corporate, his and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons lawfully having or claiming by, from and under them, or any of them, which have purchased or shall hereafter so purchase, for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same, to be utterly void, frustrate and of none effect, any pretence, colour, feigned consideration or expressing of any use or uses, to the contrary notwithstanding.

And be it further enacted by the authority aforesaid, That all and every the parties to such feigned, covenous and fraudulent gifts, grants, leases, charges or conveyances before expressed, or being privy and knowing of the same, or any of them which shall wilfully put in use, avow, maintain, justify or defend the same, or any of them, as true, simple, and done; had or made *bona fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of

their heirs, executors, administrators or assigns, or such as have or shall lawfully claim any thing by, from or under them, or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments so purchased or charged, the one moiety whereof to the queen's majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent gift, grant, lease, conveyance, incumbrance or limitation of use, to be recovered in any of the queen's courts of record, by action of debt, bill, plaint or information; and also, being thereof lawfully convicted, shall suffer imprisonment for one half year, without bail or mainprize.

ATTORNIES.

I. ACTS OF PARLIAMENT.

1. 20 HENRY III, CHAP. 10, A. D. 1235.

Attornies.

IT is provided that every free man which oweth suit to the county, tything, hundred, and wapentake, or to the court of his lord, may freely make his attorney to do those suits for him.

2. 6 EDWARD I, CHAP. 8, A. D. 1278.

Attornies.

TOUCHING wounds and maims, a man shall have his writ as before hath been used; and it is agreed that the defendants in such pleas, may make their attornies, where * appeal lieth not so that if they be attainted, being absent, then the sheriff shall be commanded to take them, and they shall have like pain as they should have had if they had been present at the judgment given.

* By this is meant the criminal process, so called.

3. 13 EDWARD I, CHAP. 10, A. D. 1285.

Attornies.

OUR lord the king, of his special grace, granteth, that such as have land in divers shires where the justices make their circuit, and that have land in shires where the justices have no circuit, that fear to be impleaded and are impleaded of oth-

er lands, in shires where they have no circuit, as before the justices at Westminster, or in the king's bench, or before justices assigned to take assises, or in any county before sheriffs, or in any court baron, may make a general attorney to sue for them in all pleas in the circuit of justices, moved or to be moved for them or against them, during the circuit; which attorney or attornies, shall have full power in all pleas moved during the circuit, until the plea be determined, or that his master remove him.

4. 15 HENRY VI, CHAP. 7, A. D. 1436.

Attornies.

ALL abbots, priors, and other religious persons, and their successors, and any secular persons within this realm, in every hundred and wapentake within the same realm, may make their attornies general to plead for them and every of them, the said abbots, priors, and religious persons, under their common seal, and the secular persons, under their seals.

5. 18 HENRY VI, CHAP. 9, A. D. 1439.

The Warrant of Attorney shall be recorded in the same term that an Exigent is awarded.

OUR lord the king, considering the damages which happen, as well to him as to his poor liege people and subjects, for that in the records of divers and many outlawries, the entry is, that the parties do appear by their attornies, where the attornies have no warrant of record, by reason whereof the said outlawries be reversible, and for the most part reversed, hath ordained by the authority of this parliament, that the statute [10 Henry VI, Chap. 4.] be affirmed, holden and kept to endure forever, and that no officer contained in the said statute shall do to the contrary of the same, upon pain of forfeiture of forty shillings to the king, every time that he of that shall be attainted, by due examination made by any of the justices of the same place before whom the record is, and every attorney who hath not his warrant entered of record in all his suits wherein process of *capias* and *exigent* be awardable, the same term in which the *exigent* is awarded, or before, and upon that he be attainted, upon like examination, for every time that he so offendeth, he shall incur the pain aforesaid.

6. 32 HENRY VIII, CHAP. 30, A. D. 1540.

Warrants of Attorney.

BE it enacted by the authority aforesaid, in avoiding of errors and other great inconveniences that daily do fortune to arise and grow in the king's courts of record at Westminster, through the negligence of attornies, because they deliver not their warrants of attorney in such actions and suits wherein they be named attorney, according to the laws of this realm, that all and every such person and persons which shall fortune hereafter to be attorney to or for any other person or persons, being demandant, plaintiff, tenant or defendant, in any action or suit, at any time hereafter commenced or taken in any of the king's said courts, and plead to an issue in the same action or suit, that then the same attornies, and every of them, from time to time, shall deliver or cause to be delivered, his or their sufficient and lawful warrant of attorney to be entered of record, for every of the said actions or suits wherein they be named attornies, to the officer or his deputy, ordained for the receipt and entry thereof, the same term when the said issue is entered of record in the said court, upon pain of forfeiting unto our sovereign lord the king, ten pounds sterling, for every such offence, and also to suffer such imprisonment as by the discretion of the justices of the court for the time being, where such default shall fortune to be made or had, shall be thought convenient.

Made perpetual by 2 & 3 Edward VI, Chap. 32.

7. 18 ELIZABETH, CHAP. 14, A. D. 1576.

Attornies.

THE first part of this statute will be found in Volume I, page 486. It is a statute of *jeofails*, and having provided that a judgment shall not be reversed for want of a warrant of attorney, it declares—

That all attornies in any suit or action in any court of record, shall deliver in the warrant of attornies in such action or suit wherein they be named attornies, to be entered or filed of record, in such manner and form as heretofore by the laws and statutes in that behalf made, they should or ought to be done, upon pain to forfeit ten pounds for every such offence, the one moiety thereof to the queen's majesty, her heirs and successors, and the other moiety to such officer or officers to whom or in whose office the said warrant should be delivered, entered or filed, and suffer imprisonment by the discretion of the justices of the court for the time being, where any

such default shall fortune to be had or made ; the said ten pounds to be recovered by action of debt, bill or information.

II. ACTS OF VIRGINIA.

8. ACTS OF 1788, CHAP. 50, SEC. 2.

BE it enacted, That the lawyers practising in the general court within the district of Kentucky, may demand and receive for any suit at common law, other than the actions hereafter mentioned, a fee of thirty shillings ; for any chancery suit, or real, mixed, or personal action, where the title or bound of lands shall or may come in question, three pounds.

INTEREST.

'20 HENRY III, CHAP. 5, A. D. 1235.

Usury shall not run against any within age.

IT is provided and granted by the king, that from henceforth usuries shall not run against any, being within age, from the time of the death of his ancestor (whose heir he is) unto his lawful age, so nevertheless that the payment of the principal debt, with the usury that was before the death of his ancestor (whose heir he is) shall not remain.

CRIMES AND CRIMINAL PROCEEDINGS.

I. ACTS OF PARLIAMENT.

1. 3 EDWARD I, CHAP. 9, A. D. 1275.

Pursuit of Felons, Punishment of Sheriffs, &c.

IT is provided that all generally be ready and apparelled at the commandment and summons of the sheriffs, and at the cry of the country, to sue and arrest felons, when any need is, and they that will not so do, and be thereof attainted, shall make grievous fine to the king ; and if the sheriff or coroner, for reward, or for prayer, or for fear, or for any manner of affinity, conceal, consent or procure to conceal, the felonies done in their liberties, or otherwise will not attach nor arrest such felons, there as they may or otherwise will not do their office, for favour borne to such misdoers, and be attainted

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thereof, they shall have one year's imprisonment, and after make a grievous fine at the king's pleasure, if they have wherewithal, and if they have not wherewith, they shall have imprisonment of three years.

2. 3 EDWARD I, CHAP. 26, A. D. 1275.

None shall commit Champerty to have part of the thing in question.

NO officer of the king, by themselves nor by other, shall maintain pleas, suits or matters hanging in the king's courts, for lands, tenements, or other things, for to have a part or profit thereof, by covenant made between them; and he that doth, shall be punished at the king's pleasure.

3. 3 EDWARD I, CHAP. 29, A. D. 1275.

The penalty of a Serjeant or Pleader committing deceit.

IT is provided, that if any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it in deceit of the court, or to beguile the court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man, and if he be no pleader, he shall be imprisoned in like manner, by the space of a year and a day at least, and if the trespass require greater punishment, it shall be at the king's pleasure.

4. 3 EDWARD I, CHAP. 37, A. D. 1275.

Disseisin.

DISSEISIN committed with force and arms, whether with robbery of goods and moveables, or without such robbery, shall be punished by fine and imprisonment.

5. 28 EDWARD I, A. D. 1300.

Champerty.

THE king willeth that no officer nor any other, (for to have part of the king in plea) shall take upon him the business that is in suit, nor none upon such covenant shall give up his right to another, and if any do, and he be attainted thereof, the taker shall forfeit unto the king, so much of his lands and goods as doth amount to the value of the part that he hath purchased, for such maintenance, and for this attaindre, whosoever will, shall be received to sue for the king, before the justices before whom the plea hangeth, and judgment shall be given by them.

But it may not be understood hereby, that any person shall be prohibit from having counsel of pleaders, or of learned men in the law, for his fee, or of his parents and next friend.

6. 33 EDWARD I, STAT. 3. A. D. 1305.

Champerty.

WHEREAS it is contained in our statutes, that none of our court shall take any plea to champerty by craft nor by engine ; and that no pleader, apprentices, attornies, stewards of great men, bailiffs, nor any other of the realm, shall take for maintenance, or the like bargain, any manner of suit or plea, whereby all the realm is much grieved, and both rich and poor troubled in divers manners. It is provided by a common accord, that all such as shall henceforth be attainted of such enterprizes, suits or bargains, and such as consent thereunto, shall have imprisonment of three years, and shall make fine at the king's pleasure.

7. 1 EDWARD III, CHAP. 8, A. D. 1327.

Duress.

TO eschew the damage and destruction that often doth happen by sheriffs, goalers and keepers of prisons, which have pained their prisoners, and by such evil means, compel and procure them to become appealers, and to appeal harmless and guiltless people, to the intent to have ransom of such appealed persons, for fear of imprisonment, or other cause, the justices of the one bench and of the other, and the justices of assise and goal delivery, shall by force of this statute, inquire of such compulsions, punishments and procurements, and hear the complaints of all them that will complain in such cases by bill, and hear and determine such plaints as well at the suit of the party, as at the king's suit.

8. 14 EDWARD III, CHAP. 10, A. D. 1340.

Duress.

IF it happen, that the keeper of a prison, or under-keeper, by too great duress of imprisonment, and by pain, make any prisoner that he hath in his ward to become an appellor against his will, and thereof be attainted, he shall have judgment of life and of member.

Q.—How is this offence punishable in Kentucky ?

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9. 18 EDWARD III. STAT. 1, A. D. 1344.

For what Offences Exigents shall be awarded.

OF conspirators, confederators and maintainers of false quarrels, also of them that bring routs in the presence of the justices, or other the king's ministers, or elsewhere, in the counties, in affray of the people, so that the law may not be done as well of them which bring the same as of them which come in their company, or as of them which bring false money in deceit of the people : against all those, in case they may not be found or brought in to answer, by attachment or distress, for the profit of our sovereign lord the king, the exigent shall be given and sued, and not against another.

10. 18 EDWARD III, STAT. 2, CHAP. 5, A. D. 1344.

Exigents.

NO exigent shall from henceforth go out in case where a man is indicted of trespass, unless it be against the peace, or of things which be contained in the declaration made in this case at the last parliament holden at Westminster—[*Vide* the last act.]

11. 25 EDWARD III, CHAP. 3, A. D. 1350.

Juries.

IT is accorded that no indictor shall be put in inquests upon deliverance of the indictes of felonies or trespass, if he be challenged for that cause, by him which is so indicted.

12. 27 EDWARD III, CHAP. 10, A. D. 1353.

Frauds in Weighing.

ALL wools and all manner of *avoir de pois*, shall be weighed by the balance, so that the tongue of the balance be even without bowing to the one side or the other, or without putting hand or foot, or other touch making of the same ; and he that doth against the same, to the damage of the seller, shall forfeit to us, the value of the merchandize so weighed, and the party that will complain, shall have the quatreble of that which he shall be so endamaged, and the trespasser shall have one year's imprisonment, and be ransomed at the king's will.

13. 1 RICHARD II, CHAP. 9, A. D. 1377.

Maintenance.

BECAUSE it is complained to the king, that many people of the realm, as well great as small, having right and true title, as well to lands, tenements and rents, as in other personal actions, be wrongfully delayed of their right and actions, by means that the occupiers or defendants, to be maintained and sustained in their wrongs, do commonly make gifts and feoffments of their lands and tenements which be in debate, and of their other goods and chattels, to lords and other great men of the realm, against whom the said pursuants, for great menace that is made to them, cannot nor dare not make their pursuits; and also on the other part, complaint is made to the king, that oftentimes, many people do disseize other of their tenements, and anon after the disseisin done, they make divers alienations and feoffments, sometimes to lords and great men of the realm to have maintenance, and sometimes to many persons of whose names the disseisers can have no knowledge, to the intent, to defer and delay by such frauds, the said disseisees and the other demandants, and their heirs, of their recovery, to the great hindrance and oppression of the people, it is ordained and established, that from henceforth, no gift or feoffment of lands, tenements or goods, be made by such fraud or maintenance, and if any be, they shall be holden for none and of no value.

The remainder of the statute was repealed in Henry IV reign.

14. 6 RICHARD II, CHAP. 6, A. D. 1382.

Rape.

THE reader will see that some parts of this statute, have never been supplied by any act either of Kentucky or Virginia.

AGAINST the offenders and ravishers of ladies, and the daughters of noblemen and other women, in every part of the realm, in those days offending more violently, and much more than they were wont:

It is ordained and established, that wheresoever and whensoever such ladies, daughters and other women aforesaid, be ravished, and after such rape do consent to such ravishers, that as well the ravishers as they that be ravished, and every of them, be from thenceforth disabled, and by the same deed be unable, to have or challenge all inheritance, dower, or joint feoffment, after the death of their husbands and ancestors, and that incontinently in this case, the next of blood of

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those ravishers, and of them that be ravished, to whom such inheritance, dower or joint feoffment, ought to revert, remain or fall, after the death of the ravisher, or of her that is so ravished, shall have title immediately, that is to say, after the rape, to enter upon the ravisher or her that is ravished, and their assigns and land-tenants, in the same inheritance, dower or joint feoffment, and the same to hold in state of inheritance.

15. 8 RICHARD II, CHAP. 3, A. D. 1384.

False Entries.

AT the complaint of the commonalty, made to our lord the king in the parliament, for that great disherison was done of the people in times past, and may be done by the false entering of pleas, rasing of rolls, and changing of verdicts, it is accorded and assented that if any judge or clerk be of such default (so that by the same default there ensueth disherison of any of the parties) convict before the king and his council, by the manner and form which to the same our lord the king and his council, shall seem reasonable; and within two years after such default made, if the party grieved be of full age, and if he be within age, then within two years after he shall come to his full age, he shall be punished by fine and ransom at the king's will, and satisfy the party; and as to the restitution of the inheritance desired by the said commons, the party grieved shall sue by writ of error, or otherwise, according to the law, if he see it expedient for him.

16. 5 HENRY IV, CHAP. 10, A. D. 1403.

IT is ordained and established that none be imprisoned by any justice of the peace, but only in the common goal.

17. 18 HENRY VI, CHAP. 14, A. D. 1439.

Penalty on Sheriffs for taking a Bribe in arraying a Jury.

IF any sheriff, under-sheriff or other which have power to make arrays or pannels, take by him or any other to his use, any hire, gift, or reward, to make or array such arrays or pannels, he which feeleth himself aggrieved in this behalf shall have his suit by writ or by bill against the sheriff, under-sheriff or other which maketh such arrays or pannels, before the justices where the said arrays and pannels shall be returned, to recover ten times as much as they shall receive for making such arrays or pannels; and the said justices shall have power

by the authority aforesaid, to hear and determine such suits, as well by the examination of the defendants in these suits, as by trial of inquest thereof to be taken, and to give judgment for the said plaintiffs against the said defendants, and every of them, which shall so be found guilty, and upon that to award execution. And in every such suit by writ, such process shall be awarded as should be awarded in a writ of trespass done against the king's peace: *Provided*, that every such suit shall be taken in the same county where they shall be sheriffs, under-sheriffs or officers, at the time of such panels or arrays to be made or arrayed.

18. 32 HENRY VIII, CHAP. 9, A. D. 1540.

Maintenance.

ALL former statutes made against those offences confirmed. And furthermore, that no person or persons, of what estate, degree or condition soever he or they be, do hereafter unlawfully maintain, or cause or procure any unlawful maintenance, in any action, demand, suit or complaint in any of the king's courts of the chancery, the Star Chamber, Whitehall, or elsewhere, within any of the king's dominions of England and Wales, or the marches of the same, where any person or persons have, or hereafter shall have authority by virtue of the king's commission patent, or writ to hold plea of lands, or to examine, hear or determine any title of lands, or any matter or witnesses concerning the title, right or interest of any lands, tenements or hereditaments, upon pain to forfeit, for every such offence, ten pounds, the one moiety thereof to the king, our sovereign lord, and the other moiety thereof to him that will sue for the same, by action of debt, bill, plaint or information in any of the king's courts. *Provided always, and it is further enacted by the authority aforesaid*, That this act shall not extend to charge any person or persons with any of the penalties mentioned in said acts, except the same person be sued thereof by action of debt, bill, plaint or information in any of the king's courts within one year next after the same offence by him or them committed.

19. 2 & 3 EDWARD VI, CHAP. 15, A. D. 1548.

Conspiracies of Victuallers and Craftsmen.

IT is enacted by the king our sovereign lord, the lords and commons in this present parliament assembled, and by the authority of the same, that if any butchers, brewers, bakers,

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poulterers, costermongers or fruiterers, shall at any time from and after the first day of March next coming, conspire, covenant, promise, or make any oaths that they shall not sell their victuals but at a certain price, or if any artificers, workmen, or labourers, do conspire, covenant or promise together, or make any oaths that they shall not make or do their works but at a certain price or rate, or shall not enterprize or take upon them to finish that another hath begun, or shall do but certain work in a day, or shall not work but at certain hours and times, that then every person so conspiring, covenanting, swearing, or offending, being lawfully convict thereof, by witness, confession, or otherwise, shall forfeit for the first offence, ten pounds to the king's highness, and if he have sufficient to pay the same, and do also pay the same within six days next after his conviction, or else shall suffer for the same offence twenty days imprisonment, and shall have only bread and water for his sustenance; and for the second offence shall forfeit twenty pounds to the king, if he have sufficient to pay the same, and do pay the same within six days next after his conviction, or else shall suffer for the second offence, punishment of the pillory; and for the third offence, shall forfeit forty pounds to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory and lose one of his ears, and also, shall at all times after, be taken as a man infamous, and his saying, depositions or oath, not to be credited at any time, in any matters of judgment.

II. And if it fortune any such conspiracy, covenant or promise, to be had and made by any society, brotherhood or company of any craft, mystery or occupation of the victualers above mentioned, with the presence or consent of the more part of them, that then, immediately upon such act of conspiracy, covenant or promise had or made, over and besides the particular punishment, before in this act appointed for the offender, their corporation shall be dissolved to all intents, constructions and purposes.

20. 5 & 6 EDWARD VI, CHAP. 23, A. D. 1552.

An ACT for stuffing Feather Beds, Bolsters, Mattresses, and Cushions.

FOR the avoiding the great deceit used and practised in stuffing of feather beds, bolsters, pillows, mattresses, cushions and quilts, *Be it enacted by the authority of this present parliament*, That from and after the last day of June next coming

no person or persons whatsoever shall make (to the intent to sell or offer to be sold) any feather bed, bolster or pillow, except the same be stuffed with dry pulled feathers, or clean down only, without mingling of scalded feathers, fen down, thistle down, sand, lime, gravel, hair, or any other unlawful or corrupt stuff, upon pain of forfeiture of any such feather beds, bolsters and pillows and every of them offered to sale.

II. *And be it further enacted by the same authority*, That from and after the said day, no person or persons shall make, to the intent to sell or offer to put to sale, any quilt, mattress or cushion which shall be stuffed with any other stuff than feathers, wool or flacks alone, upon pain of forfeiture of all and every such quilts, mattresses or cushions so sold or offered to be sold, or the value thereof.

III. The moiety of all which forfeitures to be to the king our sovereign lord, his heirs and successors, and the other moiety thereof to any such persons as will sue for the same, in any of the king's courts of record, or in any other court wherein no wager of law shall be allowed.

21. 5 ELIZABETH, CHAP. 21, A. D. 1562.

The unlawful taking of Fish, Deer or Hawks.

BE it enacted, That if any person or persons shall at any time, by day or by night, unlawfully, without authority, break, cut down, cut out or destroy any head or heads, dam or dams of any ponds, pools, motes, stagnes, stews or several pits wherein fish are, or shall happen to be put in or stored by the owners or possessioners thereof, or do or shall wrongfully fish in any of the said several ponds, pools, motes, stagnes, stews or pits, to the intent to destroy, kill, take or steal away any of the same fish, against the will, mind or pleasure of the owners or possessioners of the same, not having any lawful title or authority so to do, and thereof be lawfully convicted, at the suit of our sovereign lady the queen, her heirs or successors, or the party grieved, shall suffer imprisonment of his or their bodies by the space of three months, and shall yield and pay to the party grieved his treble damages, and after the said three months expired shall find sufficient sureties for his or their good abearing for the space of seven years after, or else shall remain and continue still in prison, without bail or mainprize, until such time as he or they so offending can and shall find such sufficient securities during the said time and space of seven years as aforesaid.

And be it further enacted, That if any person or persons

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at any time, by day or by night, in manner aforesaid wrongfully or unlawfully break or enter into any park impaled, or any other several ground enclosed with wall, pale or hedge and used for the keeping, breeding and cherishing of deer, and so wrongfully hunt, drive, or chace out, or take, or kill, or slay any deer within any such impaled park or closed ground with wall, pale, or other inclosure, and used for deer as aforesaid, or do or shall take away any hawk or hawks, or the eggs of any of them, by any ways or means unlawfully, out of any the woods or grounds of any person or persons (not having lawful authority or license so to do) and thereof be lawfully convicted, at the suit of our sovereign lady the queen, or the party aggrieved, as is afore said, shall likewise suffer imprisonment of his or their bodies by the space of three months, and shall yield and pay unto the party grieved, his treble damages, and after the said three months expired, shall find sufficient securities for his or their good abearing for the space of seven years, or else remain and continue still in prison, without bail or mainprize, until such time as he or they so offending, can and shall find such sufficient securities, during the time of seven years as aforesaid. *Provided always*, that upon the true satisfaction of the said treble damages to the party grieved, or upon the confession and knowledge thereof by the same party, before the said justices, in open sessions, within the county where the offence was committed, it shall be at the liberty of the same party grieved, to whom the said offence was committed, to release at his pleasure, the said suretyship for good abearing, at any time within the said seven years, or before.

And be it further enacted, That if any person or persons shall at any time hereafter be bound according to the tenor of this act, and shall afterwards, within the said seven years, come before the justices of the said county where the offence was committed, or some of them, in open sessions, and there confess and acknowledge in the said open sessions, his or their said offence or offences, and be sorry therefor, and satisfy the party or parties grieved, according to the tenor of this act, then the said justices at that session, or at any session afterwards, to be holden within seven years, may if it shall seem good to their discretions, discharge the said recognizance.

At first sight the preceding act might appear to be one of the game laws of England; however it is a law equally applicable and salutary in every country where private fish pools and parks exist. As far as it relates to Hawks, it is obsolete. By 3 Jac. I, Chap. 13, the provisions of this act which apply to deers, were extended to conies.

22. 8 ELIZABETH, CHAP. 3, A. D. 1565.

Malicious Prosecutions.

IF any person or persons, at any time after the first day of January next, shall by any way or mean maliciously, or for vexation and trouble, cause or procure any other person or persons to be arrested or attached to answer in the court of king's bench, court of marshalsea, or in any court within the city of London, or any other city, borough or town corporate, at the suit or in the name of any person or persons, where indeed there is no such person or persons known, or without the assent, consent, or agreement of such person or persons, at whose suit, and in whose name such arrest or attachment of any other person or persons to be had or made for vexation or trouble, as is aforesaid, and shall thereof be convicted, or lawfully accused, by indictment, presentment, or by the testimony of two sufficient witnesses, or more, or other due proof, shall, for every such offence by him or them committed, done or procured, have and suffer imprisonment of his or their body or bodies, by the space of six months, without bail or mainprize; and before he or they shall be delivered out of prison, shall pay unto the parties arrested or attached by his or their means or procurement, treble costs, charges, damages and expences that he or they shall be put unto by reason or occasion of such arrest or attachment so had, and shall also forfeit and pay unto such person or persons in whose name or at whose suit he or they shall so procure such arrest or attachment to be had or made, if then there shall be any such person known, the sum of ten pounds, for every such offence.

And be it further enacted, by the authority aforesaid, That every person and persons to whom any costs, charges, damages, forfeiture or payment of any sum or sums of money, by authority of this act shall be awarded, judged, or forfeited, shall and may at all times hereafter, have his or their remedy for the recovery thereof, by action of debt, bill or plaint, in any court of record, against such person or persons, their heirs, executors or administrators, as should or ought to pay the same by virtue of this act.

23. 23 ELIZABETH, CHAP. 8, A. D. 1581.

Wax and Honey.

BE it enacted by the authority of this present parliament, That every person within this realm or the dominions of the same, which shall after the feast of Pentecost next ensuing,

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in the making and melting of wax, by any way or means use or practise, or cause to be used or practised, any manner of deceit, by mixing and mingling the same with rosin, tallow, turpentine, or any other deceitful thing, to the intent to sell and utter the same, or offer the same to be sold or uttered for wax to any person or persons whatsoever, shall forfeit and lose the same mingled or corrupted wax; and if the same corrupted wax shall happen to be sold before such fault and corruption shall be found, that then the said mingler or corrupter, causer or procurer thereof, shall forfeit, for every pound, two shillings, whereof the one half to the queen's majesty, the other half to the party deceived, if he will sue for it, or any other person or persons that will sue for the same, in any of the queen's majesty's courts of record. And every person or persons that shall corrupt honey, sold or to be sold, with any deceitful mixture, shall forfeit the barrel or vessel and the honey therein contained, the one moiety thereof to our sovereign lady the queen's majesty, and the other to him that will sue for the same as aforesaid.

24. 27 ELIZABETH, CHAP. 6, A. D. 1585.

Sheriffs receiving a reward for not returning a Juror.

BE it enacted, That if any sheriff, under-sheriff, sheriff's deputy, sheriff's or under-sheriff's clerk, shall at any time after the end of this present session of parliament, receive, take or have, by himself or by any other, any sum of money, reward or other profit, directly or indirectly, of any person or persons, for sparing, not warning or not returning of any person to be sworn as a juror for the trial of any issue joined or to be joined in any of the queen's majesty's courts aforesaid, or before any justices, that then every sheriff, under-sheriff, sheriff's deputy, sheriff or under-sheriff his clerk, so offending, shall forfeit five pounds, the one moiety thereof to our sovereign lady the queen's majesty, and the other moiety thereof to such person or persons as will sue for the same, in any court of record, by action of debt, bill, plaint or information.

25. 35 ELIZABETH, CHAP. 8, A. D. 1593.

Deceits in making Cables and Cordage.

FORASMUCH as it is found by common experience that sundry persons using the trade of making cables, halsors and other kind of cordage within this realm, have of late, for their

private lucre and gain, used to make the same of old cast and overworn cables, halsors, and cordage, and yet have craftily and deceitfully uttered and sold the same, being tarred, as new good and strong, and as made of new and perfect stuff, covering and hiding the false and corrupt making thereof, by tarring of them before the same be put to sale, by reason whereof, not only divers ships, vessels and goods, as well of her majesty's as of sundry of her highness's subjects, but also the lives of divers of her said subjects, have been lost, perished and cast away.

For remedy whereof, *Be it enacted by the authority of this present parliament*, That if any person or persons shall make or cause to be made, any cables of any old and overworn stuff which shall contain above seven inches in compas, then every person so offending, shall forfeit and lose four times the value of every such cable, so by him or her made or caused to be made as aforesaid; and if any person or persons shall tarr or cause to be tarred, any halsors or other cordage made within this realm, of such old and overworn stuff as aforesaid, being of lesser assise and not containing in compass seven inches, and shall after by way of retail, sell or put to sale the same, being so tarred, that every person so offending, shall forfeit and lose the treble value of every cable, halsor, and other cordage, being of lesser assise, and made of such old and overworn stuff as is aforesaid, which shall be so sold or put to sale, being tarred as aforesaid, the one moiety of all which forfeitures shall be to the queen's majesty, her heirs and successors, and the other moiety to such person or persons as will sue for the same, by action of debt, bill, plaint, or information. And furthermore, that every person which shall in any wise offend against the tenor and meaning of this act, shall be imprisoned for the same during her majesty's pleasure.

26. 1 & 2 JAC. CHAP. 18, A. D. 1604.

Hops and Beer.

BE it enacted by the authority of this present parliament, That if any foreigner, stranger, native Englishman, denizen, merchant, or any other person or persons whatsoever, do at any times hereafter, bring or cause to be brought into this realm of England, out from any other foreign realm or dominions beyond the seas, any hops, being deceitfully or corruptly unclean, corrupt, or mixt with any powder, dust, dross, sand, or any other soil whatever, that every person so offend-

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ing therein, contrary to this act, shall forfeit the same hops, so brought into this realm.

And for the better avoiding of the danger of sickness by using false packed, unclean and corrupt hops, *Be it enacted*, that if any brewer of beer or ale, or any other person, shall buy the same hops so brought from beyond the seas or growing within this realm, and shall imploy and spend the same about the making or brewing of beer or ale, to be sold, being unclean, corrupt or mixt with any powder, dust, dross, sand, or any other soil whatever, every person so offending therein, contrary to the intent of this act, shall in like sort, forfeit for the same offence, the value of those hops so bought, imployed or spent in brewing ; the one moiety of all which forfeitures, shall be to our sovereign lord the king, his heirs and successors, the other moiety thereof to him or them that will seize the same or sue for the same by bill, plaint, information or action of debt, in any of the king's courts of record.

27. 3 JAC. I, CHAP. 21, A. D. 1605.

FOR preventing and avoiding the great abuse of the holy name of God in stage plays, interludes, May games, shews and such like, *Be it enacted by our sovereign lord the king's majesty, and by the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same*, That if at any time or times after the end of this present session of parliament, any person or persons do or shall, in any stage play, interlude, shew, May game or pageant, jestingly or profanely speak or use the holy name of God, or Christ Jesus, or of the Holy Ghost, or of the Trinity, which are not to be spoken but with fear and reverence, shall forfeit, for every such offence by him or them committed, ten pounds, the one moiety thereof to the king's majesty, his heirs and successors, the other moiety thereof to him or them that will sue for the same.

II. ACTS OF VIRGINIA.

28. 1661, CHAP 11, PAGE 5, V. L. 1

Divulgers of False News.

I. WHEREAS many idle and busy headed people do forge and divulge false rumours and reports, to the great disturbance of the peace of his majesty's liege people in this colony:

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II. *Be it enacted*, That what person or persons soever shall forge or divulge any such false reports, tending to the trouble of the country, he shall be, by the next justice of the peace, sent for, and bound over to the next county court; where, if he produce not his author, he shall be fined 2000lb. of tobacco (or less, if the court think fit to lessen it), and besides give bond for his behaviour, if it appear to the court that he did maliciously publish or invent it.

29. 1738, CHAP. 1, PAGE 115, V. L.

An ACT for the better preservation of the breed of Deer, and preventing unlawful hunting.

I. WHEREAS the laws heretofore made, for preserving the breed of deer, have not had the desired effect, many disorderly persons making a practice of killing them merely for the sake of the skins, whilst they are feeding on the moss growing on the rocks in the rivers, leaving the flesh to rot, whereby wolves and other noxious beasts are brought down among the stocks of cattle, hogs and sheep, of the upper inhabitants, to their great annoyance and damage; and whereas the keeping of hounds going at large is found destructive to the breed of deer, by killing not only the does while they are big with young, but also the fawns after they are fallen; and it is also found by experience, that the making large circles, and setting the same on fire, round the coverts where the deer usually lodge, commonly called fire-hunting, is not only destructive to the breed of deer, but also to the young timber and food of the cattle: For remedy of which mischiefs,

II. *Be it enacted, by the lieutenant-governor, council and burgesses of this present general assembly, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, it shall not be lawful for any person whatsoever, to hunt, shoot or kill, any buck between the first day of December and the last day of July, which shall be in any year, nor to hunt, shoot or kill, any doe or fawn between the first day of January and the last day of September, in any year. And if any person whatsoever, shall presume to hunt, shoot or kill or destroy, any such bucks, doe or fawn, running wild in the woods, within the times herein before respectively limited, or shall buy or receive the same of any Indian, or other person, every such person so offending, shall forfeit and pay the sum of twenty shillings current money, for every buck, doe or fawn, so killed, bought or received, recoverable before any justice of the peace, in the county where such offence shall

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be committed, upon conviction by the oath of one sufficient witness, or on confession of the party. And if any servant or slave, by command of his or her master, mistress, or overseer, shall so hunt, shoot or kill, or buy or receive, any deer so killed, the party giving such command shall be liable to the like penalties respectively; and if such servant or slave cannot prove such command, he or they shall receive, by order of such justice of the peace, for every such offence, twenty lashes on his bare back, well laid on, unless security be given for payment of the fine within six months after such conviction.

III. *Provided always*, that it shall and may be lawful to and for any freeholder or housekeeper to kill any kind of deer in his cornfields or other enclosed grounds, where wheat, peas, or other grain is growing, without being liable to any penalty for so doing.

IV. *Provided also*, that nothing in this act contained, shall extend or be construed to extend, to any person living or being upon the frontiers of this colony, who shall kill any deer for food, for the necessary subsistence of himself or family, so as such person do not sell or dispose of the skin of any deer so killed; and in case any person shall be prosecuted for killing deer within the time prohibited by this act, and such person shall allege that he killed such deer for food, for the necessary subsistence of himself or family, the *onus probandi* shall lie on the person so prosecuted.

V. *And be it further enacted by the authority aforesaid*, That if any person whatsoever, shall buy or receive into his or her house, any deer skin or skins, which shall have been killed within the time herein before limited, and are commonly called or known by the name of red skins, he or she so offending, and being thereof lawfully convicted before a justice of the peace, in manner aforesaid, shall forfeit and pay ten shillings current money, for every skin so bought or received. And for the further preventing the buying and receiving such red skins,

VI. *Be it enacted by the authority aforesaid*, That every constable within this dominion, shall have full power and authority, by virtue of this act, to search in all suspected places for such red skins of any deer, killed contrary to the directions hereof, and to bring the same before some justice of the peace of the county where the offender resides; and if such offender shall not make proof that such skin was taken from a deer killed within his or her enclosed grounds, tended as aforesaid, such justice shall immediately give judgment against the offender, for the penalty aforesaid.

VII. *And be it further enacted by the authority aforesaid,* That it shall not be lawful for any person to keep any beagles or hounds running at large, but such beagles or hounds shall be constantly kept in kennels, or in couples, or with clogs, except at such times as they are used in hunting, by the owner or his servants, under the penalty of five shillings for every beagle or hound so going at large.

VIII. *And be it further enacted by the authority aforesaid,* That whosoever shall hereafter use any fire-hunting or the killing of any deer by such means, on any patented land, every person present at such fire-hunting, shall forfeit and pay twenty shillings for every such offence; and if any Indian be found fire-hunting as aforesaid, it shall and may be lawful for the owner of such land, or his or her overseer, to take away the gun of such Indian, and the same to keep to his own use.

IX. *And be it further enacted by the authority aforesaid,* That if any person shall presume to hunt or range on the patented lands of any other freeholder, without the leave of the owner of such lands, every such offender shall forfeit and pay the sum of twenty shillings for every such offence; all which penalties herein before mentioned, shall and may be recovered before any justice of the peace in the county where any of the offences aforesaid shall be committed, and shall be divided, one half to and for the use of the parish where the offender shall reside, and the other half to the person or persons who will inform for the same; and every justice of the peace before whom information shall be made of any the offences aforesaid, shall take for evidence the confession of the party accused, or the oath of one credible witness: and where the owner of any land shall prosecute for any unlawful hunting and ranging on his lands, the oath of such owner shall be sufficient evidence to convict the offender; but in that case, the whole penalty shall go to the parish.

X. *And be it further enacted by the authority aforesaid,* That every county court within this dominion shall yearly, in the month of January, or the next succeeding court, administer to every constable within their respective counties an oath well and truly to present to the next justice of the peace all offences against this act; and every justice to whom such presentment or information shall be made shall immediately issue his warrant for the bringing before him such offender, and to give judgment and award execution against the goods and chattels of such offender, for the penalties herein before inflicted, respectively.

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XI. *And be it further enacted*, That one act made at a session of assembly, held at the capitol the twenty-second day of August, one thousand seven hundred and thirty-four, intituled "An act for lessening the penalties for killing deer at unseasonable times, and for the better recovery thereof," and all and every other act and acts heretofore made, so far as the same relate to any matter or thing within the purview of this act, be and are hereby repealed and made void.

30. 1748, CHAP. 1, SEC. 63, 64 & 65, PAGE 155, V. L.

LXIII. *And be it further enacted by the authority aforesaid*, That if any person or persons shall at any time shoot, hunt or range upon the lands or tenements, or fish or fowl in any creeks or waters included within the bounds of any other person or persons, without license first obtained of the owner of such lands, every such offender shall forfeit and pay twenty shillings for every such offence; to be recovered with costs, before any justice of the peace of the county where the offence shall be committed, by the informer to his own use, in which information the confession of the party accused, or the oath of one credible witness, shall be sufficient evidence. And where the owner of the land shall prosecute for any unlawful shooting, hunting, ranging, fishing or fowling, within his bounds, the oath of such owner shall be sufficient evidence to convict the offender; but in that case the penalty shall be paid to the churchwardens of the parish wherein the offender resides, to the use of their parish; and moreover, every such offender shall be liable to the action of the party grieved, at the common law, for his or her damages.

LXIV. And that if any person shall be the third time convicted of any such offence as aforesaid, the justice of peace before whom such conviction shall be, over and above giving judgment for the aforesaid forfeiture, shall require such offender to enter into recognizance, with one or more sufficient sureties, to our sovereign lord the king, his heirs and successors, in the penalty of ten pounds current money, for his good behaviour, during one whole year from thence next following; or in case of refusal so to do, shall commit him to the common goal, there to remain until he give such security, or until the expiration of one month. And if, after such surety given, such offender shall be convicted of shooting, hunting, ranging, fishing, or fowling, unlawfully as aforesaid, within the time in his recognizance limited, such offence shall be a breach of the good behaviour; and the penalty of his re-

cognizance shall be forfeited to the king, for the use of the parish wherein such conviction shall be.

LXV. And that whosoever shall use any fire-hunting, or the killing of any deer by such means, every person present at such fire-hunting shall forfeit and pay twenty shillings for every such offence, to the informer; to be recovered in the like manner, and upon such evidence, and to the same use or uses, as the before recited offences of unlawful shooting, hunting, ranging, fishing, or fowling, are directed to be recovered and applied. And if any Indian be found fire-hunting as aforesaid, it shall be lawful for the owner of the land where he shall be so found, or his or her overseer, to seize and take away the gun of such Indian, and the same to keep to his own use.

31. 1748, CHAP. 25, SEC. 8 & 10, PAGE 245, V. L.

VIII. *And be it further enacted by the authority aforesaid,* That if any person or persons whatsoever do or shall, at any time or times, by any fraud, shift, cozenage, circumvention, deceit, unlawful device, or evil practice whatsoever, in playing at or with cards, dice, or any other game or games, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, win, obtain, or acquire, to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, every person so winning by such ill practice, and being thereof convicted, upon indictment or information, shall forfeit five times the value of the money or other thing so won, and shall be deemed infamous, and suffer such corporeal punishment as in cases of wilful perjury; and such penalty shall be recoverable, with costs, by any person or persons suing for the same, by action of debt, in any court of record of this dominion having cognizance thereof.

X. And to prevent quarrels happening by gaming, *It is hereby further enacted,* That if any person or persons shall assault and beat, or shall challenge, or provoke to fight, any person or persons whatsoever, upon account of any money, or other thing won by gaming or betting, the person and persons so assaulting, beating, challenging, or provoking to fight, being thereof convicted, shall forfeit to the party grieved ten pounds current money, to be recovered, with costs, by action of debt, in any county court, and moreover shall be liable to the action of the party grieved, at the common law.

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32. 1772, CHAP. 39, PAGE 27, CHAN. REV.

An ACT to amend an act entitled "an act for the better preservation of the breed of Deer, and preventing unlawful hunting."

I. WHEREAS the act passed in the twelfth year of his late majesty, king George the second, entitled "an act for the better preservation of the breed of deer, and preventing unlawful hunting," and one other act, passed in the first year of his present majesty, for amending the said act, have been found insufficient to prevent the mischiefs thereby intended to be remedied, many idle people making a practice in severe frozen weather, and deep snows, to destroy deer in great numbers, with dogs, so that the whole breed is likely to be destroyed, in the inhabited parts of this colony: for remedy of which, *Be it enacted by the governor, council, and burgeses of this present general assembly, and it is hereby enacted by the authority of the same,* That from and after the passing of this act, every person who shall kill any deer contrary to the tenor of the said acts, shall forfeit and pay the sum of fifty shillings, for every deer so killed; to be recovered with costs, by petition, where the penalty complained for at one time, does not exceed five pounds, and by action of debt or information, where the same shall exceed five pounds, brought in the court of the county where the offence was committed, by any person suing for the same.

II. And for the more effectual discovery of persons offending against this and the before recited acts, *Be it further enacted by the authority aforesaid,* That the presiding justice of every court in this colony, at the time the grand jury for his county shall be sworn, shall give it in charge to the said grand jury, to make inquiry and presentment of all such offenders, and on conviction, the penalty shall go to the use of the poor of the parish where the offence was committed, towards lessening the said parish levy.

III. *And be it further enacted,* That every grand jury shall take an oath, at the time they are impannelled, to make due presentment of all and every person within their county, whom they shall know to have been guilty of a breach of this act.

IV. And whereas numbers of disorderly persons, not regarding the laws now in force for the preservation of the breed of deer, have during the late great snows, in many parts of this colony, almost destroyed the breed, by which the inhabitants will not only be deprived of that wholesome and a-

greeable food, but the trade in the article of skins, will be greatly diminished, as well as the revenue of the college, unless, for a time, all persons be prohibited from killing of deer : *Therefore, be it further enacted by the authority aforesaid,* That from and after the passing of this act, no person shall hunt, shoot, or kill, in any manner, any wild deer, until the first day of August, which shall be in the year of our Lord Christ, one thousand seven hundred and seventy-six ; and every person so offending, shall be liable to the same penalty, and to be recovered and applied in the same manner as the penalty before inflicted by this act for killing deer out of season.

V. And whereas doubts have arisen whether an action will lie against any person who shall kill a tame deer, the property of another, that shall be found ranging on any uncultivated lands, other than those of the owner of the deer, which prevents many persons from attempting to raise tame deer : for settling such doubts, *Be it enacted by the authority aforesaid,* That if any person shall shoot, or otherwise kill, any tame deer, having a bell or collar on its neck, every person so offending, shall be liable to an action of trespass, to the person whose property the same shall be, to be prosecuted in the court of the county where the offence shall be committed. *Provided nevertheless,* that nothing in this act shall be construed to prevent any person residing in the frontier counties of this colony, from killing deer for food for themselves and families, as is allowed by the before recited acts of assembly, nor any other persons, from killing deer in their own enclosed lands, at such time and times as deer are allowed to be killed by the said first recited act.

VI. *And be it further enacted by the authority aforesaid,* That if any person or persons, not being a freeholder, shall, on conviction, fail to make present payment of the penalties and forfeitures by this act inflicted, to the person or persons entitled to receive the same, or give security to pay the same within six months after such conviction, or where the penalty shall be to the parish, at the laying of the next parish levy, where such offence shall be committed, then, or in either case, he or they so offending, shall, by order of such justice, or the court before whom the conviction shall be made, receive, for every such offence, twenty lashes on his or their bare back, well laid on ; and if any such offenders shall refuse to pay the money on the bonds aforesaid, when the same shall become due, it shall and may be lawful for such justice, or the

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court of the county where such offender or offenders reside, on a motion to them made by the informer, or the churchwardens, as the case may be, to give judgment on the said bonds, and thereon to award execution ; provided such offender or offenders, and his or their securities, his and their heirs, executors or administrators, have ten days previous notice in writing.

VII. *And be it further enacted, by the authority aforesaid,* That so much of the said recited acts as is within the purview of this act, be, and the same is hereby repealed and made void.

33. 1777, CHAP. 11, PAGE 65, CHAN. REV.

An ACT to prevent Forestalling, Regrating, Engrossing, and Public Vendues.

I. *BE it enacted by the general assembly,* That if any person shall buy, or cause to be bought, any goods, wares, merchandise, or victual, which at the time of purchase shall be under carriage or transportation to any market or fair within this commonwealth, to be sold therein, or to any city or town wherein there is no public market established, or to any port or harbour of this commonwealth for sale, or shall make any bargain, contract or promise, for the buying or having such goods, or the pre-emption thereof, before the same shall be in or at the market, fair, city, town, port, or harbour, ready to be there sold, or shall persuade any person coming to this commonwealth, or any market therein, to forbear bringing any goods, wares or merchandise thereto, or use any means or device for the enhancing of the price of any such goods in this commonwealth, or any market therein, every such person offending in either of the said particulars, is declared a forestaller. But this shall not extend to any person living more than four miles from any town within this commonwealth, and purchasing any victual, goods or commodities, necessary for the use and consumption of himself and his family, or those in his employ, for one year.

II. If any person shall by any means buy, obtain, or get into his possession, in any fair or market, any victual that shall have been brought to the said fair or market to be sold, and shall make sale thereof again in the same place, or in any other place within four miles thereof, he is declared a regrater.

III. If any person shall buy within this commonwealth, to sell again, in this or any of the United States, any goods,

wares, merchandise, or victual, which shall have been imported or brought into this state from any other state or place whatsoever, or any victual, commodities, manufactures, or materials for manufacture, raised or wrought within this state, except such purchase be made from the original importer, owner, maker, or manufacturer of such goods, wares, merchandise, victual, commodities, manufactures, or materials for manufacture, respectively, every person so offending is declared an engrosser. But this act shall not extend to any person purchasing such articles from one who purchased from the importer, and retailing the same more than twenty-five miles from any tide water, nor to any agent of this commonwealth, or of the United States, or any of them, purchasing necessities really and *bona fide* for the use of the army or navy, and not dealing in such articles on the account of himself or any other private persons, (such agent for the United States, or any of them, producing, whensoever called on, sufficient proof of his acting under authority from the United States, or some one of them,) nor to the managers of any iron works, purchasing necessities for the use of those employed about such iron works, and selling them to such persons, nor to the purchasers of materials for manufacture, which shall be really applied to that use in the family of the purchaser, or some manufactory wherein he is interested, nor to ordinary keepers purchasing victual to be retailed in their ordinaries, or persons keeping private houses for lodging or entertainment, who may buy any kind of victual and retail the same in their respective houses after it is prepared and dressed for the table, nor to the owners of any imported goods sold as being damaged, for the benefit of the insurers, or condemned in the admiralty, and purchased by the said owners.

IV. Every person becoming a forestaller, regrater, or engrosser, as before described, shall, on conviction, for the first offence, suffer imprisonment for the space of one month, without bail or mainprize, and forfeit the value of the things so by him bought or sold, and for the second offence, shall be imprisoned two months, without bail or mainprize, and shall forfeit the double value of the things so by him bought or sold, and for any such offence afterwards committed, shall stand in the pillory for such time as the court shall direct, not exceeding two hours, shall forfeit treble the value of the things by him bought or sold, and be imprisoned at the discretion of the jury convicting him of the said offence, provided such imprisonment doth not exceed three months.

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V. No goods, wares, merchandise, victual, commodities, manufactures, or materials for manufacture, imported into this commonwealth, or raised or manufactured within the same, (except slaves, stocks, and house-hold furniture, goods condemned in the admiralty court, or goods which being damaged are by the law and the custom of merchants, to be sold for the benefit of insurers, victual, or goods sold on account and for the benefit of the United American States, or some one of them, goods taken in execution, or upon attachment, or distrained for rent or public taxes, or sold by executors or administrators,) shall be exposed to sale at public vendue, under penalty on each person selling or buying at such vendue, for each article so sold, of double the value thereof.

VI. All the penalties hereby inflicted, shall be one half to the use of the commonwealth, and the other to the informer, and where the sum doth not exceed twenty-five shillings, shall be recoverable, with costs, before any justice of the peace, and where it shall exceed that sum, by action of debt or information, in any court of record; and in such action of debt the clerk shall endorse on the writ, that bail is to be required; whereupon the sheriff shall take sufficient bail for the appearance of the defendant, or be answerable himself, as in other like cases; and the court may either rule the defendant to give special bail, or admit an appearance without, as to them shall appear just.

VII. All acts of parliament and of general assembly, relating to any thing within the purview of this act, are hereby repealed.

34. 1779, CHAP. 42, SEC. 5, PAGE 119, CHAN. REV.

V. No person, in order to raise money for himself or another, shall publicly or privately put up a lottery of blanks and prizes, to be drawn or adventured for, or any prize or thing to be raffled or played for; and whoever shall offend herein, shall forfeit the whole sum of money proposed to be raised by such lottery, raffling, or playing, to the use of the commonwealth. The presiding justice, as well in the general, as in all the inferior courts of law in this commonwealth, shall constantly give this act in charge to the grand-juries of their courts, at the times when such grand-juries shall be sworn.

This act shall commence and be in force from and after the first day of March next.

35. 1784, CHAP. 59, PAGE 11, OCT. SESSION.

BE it enacted by the general assembly, That if the court for any county within this commonwealth shall fail to nominate persons for sheriff, according to the periods prescribed by law, every justice so neglecting his duty, shall forfeit and pay the sum of fifty pounds. If any person hereafter to be appointed sheriff of any county, shall fail to give bond in two months after his appointment, the clerk of the court shall, within one month thereafter, transmit to the governor for the time being, a certificate of such neglect or failure, under the penalty of one hundred pounds.

The penalties by this act imposed, may be recovered by bill, plaint, or information, in any court of record; one moiety to the use of the informer, the other moiety to the use of the commonwealth.

36. 1785, CHAP. 10.

An ACT punishing certain Offences, and vesting the Governor with certain Powers.

SEC. 1. WHEREAS it is the true interest and policy of this commonwealth, that the constitution, sovereignty and independence thereof, should at all times be maintained and supported, and it is highly criminal in any person or persons to alienate the citizens of the state from their attachment and allegiance to the same:

Sec. 2. *Be it therefore enacted by the general assembly,* That every person or persons who shall erect or establish, or cause and procure to be erected or established, any government separate from or independent of the government of Virginia, within the limits thereof, unless by act of the legislature of this commonwealth for that purpose first obtained; or who shall in any such usurped government, hold or execute any office, legislative, executive, judiciary or ministerial, by whatever name such office may be distinguished or called; or who shall swear or otherwise solemnly profess allegiance or fidelity to the same; or who shall, under pretext of authority derived from or protection afforded by such usurped government, resist or oppose the due execution of the laws of this commonwealth, shall be adjudged guilty of high treason, and shall be proceeded against and punished in the same manner as other traitors may be proceeded against and punished by the laws now in force.

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Sec. 3. *And be it further enacted*, That every person who shall attempt to establish such government by any other means than with the assent of the legislature of this commonwealth, and in pursuance of such attempts, shall join with any other person or persons in any overt act for promoting such attempts, or who shall by writing, or advised speaking, endeavor to instigate the people of this commonwealth to erect or establish such government, without such assent as aforesaid, shall be adjudged guilty of a high crime and misdemeanor, and on conviction, shall be subject to such pains and penalties, not extending to life or member, as the court before whom the conviction shall be shall adjudge.

Sec. 4. *And be it further enacted*, That in case any combination for establishing such government, shall become so powerful as to obstruct the due execution of the laws of this commonwealth in the ordinary course of proceeding, within any county or counties thereof, it shall and may be lawful for the governor, with the advice of the council, to call out the militia of this state to suppress such combination, and to employ them in the same manner as he may do by law in cases of invasion or insurrection.

37.

1785, CHAP. 68.

An ACT to prevent the circulation of private Bank Notes.

SEC. 1. *BE it enacted by the general assembly*, That it shall not be lawful for any person to offer in payment a private bank bill or note for money, payable to bearer; and whosoever shall offend herein, shall not only forfeit to the informer ten times the value of the sum mentioned in such bill or note, but may be apprehended by warrant of a justice, and, upon due proof of the fact made to him, or upon his own acknowledgment thereof, be bound to the good behaviour, or if he afterwards offend in the like manner, it shall be deemed a breach of the condition of the recognizance.

Sec. 2. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.

38.

1785, CHAP. 72.

An ACT for preventing Infection of the Horned Cattle.

SEC. 1. *BE it enacted by the general assembly*, That the driving of cattle into or through the commonwealth, or any part thereof, if it be not to remove them from one plantation

to another of the same owner, or to be used at his house, shall be deemed a nuisance, unless the driver shall produce to any freeholder of a county wherein the drove is passing, who shall require it, a bill of health, signed by some justice of the commonwealth, containing the number of the drove, with descriptions of the cattle, by their sexes, flesh marks, and ear marks, or brands, and certifying them to be free from distemper; or, notwithstanding he may produce such bill of health, unless he shall forthwith obtain another at the like requisition, if any such freeholder make affidavit before a justice, that he hath cause to suspect some of the cattle to be distempered. Such bill of health shall not be given, in either case, before two disinterested freeholders, appointed by warrant of a justice, shall have viewed the cattle, and reported them to be free from distemper. A freeholder refusing to obey such warrant, shall be amerced by the justice granting such warrant, in any sum not exceeding twenty-five shillings. If the cattle appear by the report to be distempered, the owner may impound them; and if he refuse to do so, or if he suffer them to escape from the pound, before a justice shall have certified that they may be removed without annoying others, the same justice, or some other to whom information shall be given of the fact, shall by his order, cause them to be slaughtered, and their carcasses, with the hides on, but so cut or mangled that none may be tempted to take them up and flay them, to be buried four feet deep. Those who shall be employed in executing such orders, shall receive five shillings for every head so buried, to be paid by the county wherein it shall happen; and every one appointed by the order, who shall refuse or neglect to execute it, shall be amerced in the sum of five shillings for every head so ordered to be buried. Every one shall so restrain his distempered cattle, or such as are under his care, as that they may not go at large off the land to which they belong, and when they die, shall bury them with their hides, in manner aforesaid; and knowingly offending in either of those instances, shall be amerced in the sum of twenty shillings for every head they shall neglect so to bury.

Sec. 2. This act shall commence and be in force from and after the first day of January, 1787.

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39.

1785, CHAP. 76.

An ACT for unlading Ballast, and burial of Dead Bodies from on board Ships.

SEC. 1. *BE it enacted by the general assembly,* That the court of every county or corporation, adjacent to any navigable river or creek, shall from time to time, as vacancies happen, appoint one or more ballast-masters, residing near to the places where vessels usually ride in such river or creek, to be overseers and directors of the delivery and unloading of ballast from on board any ship or vessel within a certain district, to be by them ascertained.

SEC. 2. Every ballast-master so appointed, upon receiving notice from the master or chief officer on board of any ship or vessel within his district, that ballast is to be discharged from such vessel, shall go on board the same, and attend until the whole ballast is delivered, which he shall see brought on shore and laid at some convenient place near the vessel, where it may not obstruct navigation, nor be washed into the channel, shall thereupon give such master or officer a certificate that the ballast hath been duly unladen from on board such vessel; for which service he shall receive five shillings per day, to be paid by the master or chief officer to whom such certificate is granted.

SEC. 3. Every ballast-master failing to do his duty, according to this act, shall forfeit twenty pounds for each default, in which case, or if there be no ballast-master, the naval officer of the district, shall, under the like penalty, perform the same duty.

SEC. 4. Every master or chief officer of a ship or vessel, having ballast to unlade, shall give notice in writing of the time he purposes to land the same, to the ballast-master of the district; and shall produce to the naval officer, at the time of his clearing out, a certificate of his having unladen his ballast, according to this act. And if any master or chief officer on board of any ship or vessel, shall presume to land or cast overboard any ballast therefrom, without giving such notice, or contrary to the orders he shall receive from the ballast-master of the district, or shall fail to produce a certificate of his having duly landed his ballast, to the naval officer, at the time of his clearing out, he shall forfeit fifty pounds for every offence or failure; and, in any suit to be brought for the said penalty, the clerk shall endorse on the writ that bail is to be required, and the court may rule the defendant to give special bail, if they see cause so to do.

Sec. 5. When any person shall die on board of any ship or vessel, within this state, the master thereof shall cause the dead body to be brought on shore, and there buried, at least four feet deep above high water mark, or be subject to the penalty of fifty pounds; in any suit, for which, the defendant may be ruled to give special bail, and the clerk shall endorse on the writ, that bail is required.

Sec. 6. This act shall commence and be in force from and after the first day of January, 1787.

40.

1785, CHAP. 80.

An ACT directing what Prisoners shall be let to Bail.

Sec. 1. FOR ascertaining in what cases persons apprehended on suspicion of felony shall or shall not be admitted to bail, *Be it enacted by the general assembly*, That those shall be let to bail who are apprehended for any crime not punishable in life or limb; and if the crime be so punishable, but only a light suspicion of guilt fall on the party, he shall in like manner be bailable: but if the crime be punishable in life or limb, or if it be manslaughter, and there be good cause to believe the party guilty thereof, he shall not be admitted to bail.

Sec. 2. No person shall be bailed after conviction of any felony.

Sec. 3. If any justice let any go at large on bail who is not bailable, or refuse to admit to bail any who have right to be so admitted, after they shall have offered sufficient bail, or require excessive bail, he shall be amerced at the discretion of a jury.

Sec. 4. This act shall commence and be in force from and after the first day of January, 1787.

41.

1786, CHAPS. 50 & 51.

An ACT against Conspirators.

BE it declared and enacted by the general assembly, That conspirators be they that do confederate and bind themselves by oath, covenant or other alliance, that every of them shall aid and bear the other falsely and maliciously, to move or cause to be moved any enticement or information against another on the part of the commonwealth, and those who are convicted thereof at the suit of the commonwealth, shall be punished by imprisonment and amercement, at the discretion of a jury.

CRIMES AND CRIMINAL PROCEEDINGS. 569

An ACT against conveying or taking Pretensed Titles.

BE it enacted by the general assembly, That no person shall convey or take; or bargain to convey or take, any pretended title to any lands or tenements, unless the person conveying or bargaining to convey, or those under whom he claims, shall have been in possession of the same, or of the reversion or remainder thereof, one whole year next before; and he who offendeth herein knowingly, shall forfeit the whole value of the lands or tenements; the one moiety to the commonwealth, and the other to him who will sue as well for himself as for the commonwealth; but any person lawfully possessed of lands or tenements, or of the reversion or remainder thereof, may nevertheless take, or bargain to take, the pretended title of any other person, so far, and so far only, as it may confirm his former estate.

42.

1786, CHAP. 53.

An ACT prescribing the punishment of those who sell unwholesome Meat or Drink.

BE it enacted by the general assembly, That a butcher or other person that selleth the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or a baker, brewer, distiller, or other person, who selleth unwholesome bread or drink, shall, on conviction by the verdict of a jury, the first time, be amerced; the second time he shall suffer judgment of the pillory; and the third time he shall be imprisoned and make fine; and every time after, he shall be adjudged to hard labor six months in the public works.

43.

1788, CHAP. 12.

An ACT to prevent the Importation of Convicts into this Commonwealth.

SEC. 1. WHEREAS it has been represented to this general assembly by the United States in congress, that a practice has prevailed, for some time past, of importing felons convict into this state, under various pretences; which said felons convict, so imported, have been sold and dispersed among the people of this state, whereby much injury hath been done to the morals, as well as the health, of our fellow-citizens: For remedy whereof, *Be it enacted,* That from and after the first day of January next, no captain or master of any vessel, or any other person, coming into this commonwealth, by land or by water, shall import, or bring with him, any person who

shall have been a felon convict, or under sentence of death, or any other legal disability, incurred by a criminal prosecution, or who shall be delivered to him from any prison or place of confinement, in any place out of the United States.

Sec. 2. *And be it further enacted*, That every captain or master of a vessel, or any other person, who shall presume to import, or bring into this commonwealth, by land or by water, or shall sell or offer for sale, any such person as above described, shall suffer three months imprisonment, without bail or mainprize, and forfeit and pay for every such person so brought and imported, or sold or offered for sale, the penalty of fifty pounds current money of Virginia, one half to the commonwealth, and the other half to the person who shall give information thereof; which said penalty shall be recovered by action of debt or information, in any court of record, in which the defendant shall be ruled to give special bail.

44.

1789, CHAP. 10.

An ACT concerning Homicide by Misfortune.

BE it enacted by the general assembly, That in case it be found by the country, that any man by misfortune, or in his own defence, or in other manner without felony, did kill another, he shall be acquitted.

LEAP YEAR.

STATUTE DE ANNO BISSEXTILI, 21 HENRY III, A. D.
1236.

THE king unto his justices of the bench, greeting: know ye, that where within our realm of England it was doubted of the year and day that were wont to be assigned unto sick persons being impleaded, when and from what day in the year going before unto another day of the year following the year and day in a leap year, ought to be taken out and reckoned how long it was:

We, therefore, willing that a conformity be observed in this behalf every where within our realm, and to avoid all danger from such as be in plea, have provided, and by the counsel of our faithful subjects, have ordained, that to take away from henceforth, all doubt and ambiguity that might arise hereupon, the day increasing in the leap year, shall be

MARRIAGE AND PRE-CONTRACTS. 571

accounted for one year, so that because of that day, none shall be prejudiced that is impleaded ; but it shall be taken and reckoned of the same month wherein it groweth, and that day and the day next going before, shall be accounted for one day. And therefore we do command you, that from henceforth you do cause this to be published afore you, and be observed.

ALIENS.

32 HENRY VIII, CHAP. 16, A. D. 1540.

Aliens.

BE it enacted, That every alien and stranger, born out of the king's obeisance, not being a denizen, which now or hereafter shall come in or to this realm or elsewhere, within the king's dominions, shall, after the first day of September next coming, be bounden by and unto all the laws and statutes of this realm, and to all and singular the contents of the same.

MARRIAGE AND PRE-CONTRACTS.

I. ACTS OF PARLIAMENT.

32 HENRY VIII, CHAP. 38, A. D. 1540.

Marriages to stand notwithstanding Pre-Contracts.

This statute was repealed in part by a statute of Edward VI, and by one of Philip and Mary ; but as the repealing acts were never in force in Virginia, the act of Henry remains.

Be it enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That from and after the first day of July next coming, in the year of our Lord God 1540, all and every marriages within the church of England, shall be contracted between lawful persons, (as by this act we declare all persons to be lawful that are not prohibited by God's law to marry,) such marriages being contracted and solemnized in the face of the church, and consummate with bodily knowledge or fruit of children, or child being had therein between the parties so married, shall be by authority of this present act of parliament aforesaid, deemed, judged and taken to be lawful, good, just and indissoluble, notwithstanding any pre-contract or pre-contracts of matrimony.

ny, not consummate with bodily knowledge, which either of the parties so married, or both, shall have made with any other person or persons before the time of contracting that marriage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore.

II. ACTS OF VIRGINIA.

1753, CHAP. 2, SEC. 14 & 15, PAGE 311, V. L.

XIV. FOR a prevention of that abominable mixture and spurious issue, which hereafter may increase in this his majesty's colony and dominion, as well by English and other white men and women, intermarrying with negroes or mulattoes, as by their unlawful coition with them, *Be it enacted by the authority aforesaid, and it is hereby enacted,* That whatsoever English or other white man or woman, being free, shall intermarry with a negro or mulatto man or woman, bond or free, shall, by judgment of the county court, be committed to prison, and there remain during the space of six months, without bail or mainprize, and shall forfeit and pay ten pounds current money of Virginia, to the use of the parish as aforesaid.

XV. *And be it further enacted,* That no minister of the church of England, or other minister or person whatsoever, within this colony and dominion, shall hereafter wittingly presume to marry a white man with a negro or mulatto woman, or to marry a white woman with a negro or mulatto man, upon pain of forfeiting and paying for every such marriage the sum of ten thousand pounds of tobacco, one half to our sovereign lord the king, his heirs and successors, for and towards the support of the government and the contingent charges thereof, and the other half to the informer; to be recovered, with costs, by action of debt, bill, plaint or information, in any court of record within this his majesty's colony and dominion, wherein no essoin, protection or wager of law, shall be allowed.

LAND MEASURE.

STAT. INCERTI TEMPORIS.

Compositio ulnarum et perticarum.

Measures for Land.

ORDINATUM est quod tria grana ordeï sicca et rotunda faciunt pollicem, duodecem pollices faciunt pedem tres pedes

faciunt ulnam quinque ulne et dimidia faciunt perticam et quadraginta pertice in longitudine et quater in latitudine faciunt unam acram.

NOTE.—There was an ordinance for measuring land passed 33 Edw. I, which is a curious phenomenon in legislation. It begins by declaring that when an acre of land contains ten perches in length, it shall be sixteen perches in breadth—if it contains eleven perches in length, it shall be fourteen perches and an half, and three feet and three quarters of one foot in breadth, and so on through thirty-five given dimensions, calculating by perches, half perches, feet, half feet, quarter feet, inches, half inches and quarter-inches. The result of the whole is, that an acre of land, in whatever form it lies, shall contain one hundred and sixty square perches. As this is clearly implied in this little statute, and as it lays down the elements of all lineal measure, I deemed it unnecessary to burthen the reader with the other.

WEIGHTS AND MEASURES.

I. ACTS OF PARLIAMENT.

1. STAT. INCERTI TEMPORIS.

Measures.

BY consent of the whole realm of England, the measure of our sovereign lord the king was made so that an English penny, called a sterling round, and without any clipping, shall weigh 22 wheat corns in the midst of the ear, and that 20 pence shall make an ounce, and twelve ounces one pound, and eight pounds shall make a gallon of wine, and eight gallons of wine shall make a bushel London, which is the eighth part of a quarter.

2. 2 HENRY VI, CHAP. 11, A. D. 1423.

Measures.

IT is ordained and established that a barrell of herring or eels shall contain thirty gallons, fully packed, and a butt of salmon shall contain eighty-four gallons, fully packed.

3. 9 HENRY VI, CHAP. 8, A. D. 1430.

Weights.

IT is ordained by the authority of this parliament, that a wey of cheese shall contain thirty-two cloves, each clove weighing seven pounds, the said weights laying.

4. 1 RICHARD III, CHAP. 13, A. D. 1483.

Measures of Malmsey, Wine and Oil.

IT is ordained, enacted and established; that a butt of malmsey shall contain 126 gallons; a tun of wine or oil shall contain 252 gallons; a pipe shall contain 126 gallons; a tertain shall contain 84 gallons; a hogshead, 63 gallons; a barrel, 31 and a half gallons, and every rundlet shall contain 18 and a half gallons. And in case that any person, of what country soever he be, from henceforth do sell to any of the king's liege subjects for any certain price assigned, any butt, tun, pipe, tertain, hogshead, barrel or rundlet of any manner of wine or oil, lacking any thing of the said assise or measure, that the seller shall allow or rebate of the same price to the buyer of such wine or oil, as much money as such lacking after the rate shall amount to, upon pain to forfeit to our sovereign lord the king, the value of all the wine and oil so sold contrary to this ordinance; any privy covenant or contract made or to be made betwixt the buyer and the seller, contrary to this ordinance, in any manner notwithstanding.

This statute was confirmed by 28 Henry VIII, Chap. 14, and by that statute the forfeiture is increased to double the value.

5. 11 HENRY VII, CHAP. 5, A. D. 1496.

Weights and Measures.

OUR sovereign lord the king, by the assent of the lords spiritual and temporal, and by the commons in this parliament assembled, and by authority of the same, ordaineth, establisheth and enacteth, that the measure of a bushel, contain eight gallons of wheat, and that every gallon contain eight pounds of wheat, *Troy* weight, and every pound contain twelve ounces, of *Troy* weight, and every ounce contain twenty sterlings, and every sterling be of the weight of thirty-two corns of wheat that grew in the midst of the ear of wheat, according to the old laws of the land.

6. 23 HENRY VIII, CHAP. 4, A. D. 1531.

Measures of Beer and Ale.

BE it enacted, That every barrel of beer shall contain 36 gallons; every kilderkin of beer, 18 gallons; every firkin of beer, 9 gallons; and every barrel of ale shall contain 32 gallons; every kilderkin of ale, 16 gallons, and every firkin of ale, 8 gallons.

7. 1734, CHAP. 1, SEC. 1, 2 & 5, PAGE 96, V. L.

An ACT for more effectually obliging persons to buy and sell by Weights and Measures according to the English Standard.

FORASMUCH as the buying and selling by false weights and measures is of late much practised in this colony, to the great injury of the people :

*Be it enacted by the lieutenant-governour, council and bur-
gesses of this present general assembly, and by the authority of
the same,* That from henceforth there shall be but one weight,
one measure, one yard and one ell, according to the standard
of the exchequer in England ; and whosoever shall sell or
buy by or keep, any other weight, measure, yard or ell,
whereby any corn, grain, salt or other thing is bought or sold,
after the tenth day of June, one thousand seven hundred and
thirty-six, shall forfeit for every offence twenty shillings, be-
ing thereof lawfully convicted, by the oath of one sufficient
witness, before any justice of the peace of the county where
the offence shall be committed ; to be levied by distress and
sale of the goods of the offender, for the use of the poor of
the parish, rendering the overplus to the party so offending :
and in default of such distress, such justice of the peace shall
commit the said party to the common goal or prison, there to
remain, without bail or mainprize, until he shall pay such
forfeitures as aforesaid.

Provided always, That this act or any thing herein contain-
ed, shall not be construed to prohibit any person or persons
whatsoever from buying and selling by steelyards, which
shall be tried by and agree with the standard aforesaid, where
the buyer and seller, payer and receiver, shall both consent
thereto, any thing in this act contained to the contrary hereof
in any wise notwithstanding.

RIGHTS OF WIDOWS.

1. In 1705 an act was passed for the distribution of intestates' estates, declaring widows' rights to their deceased husbands' estates, and for securing orphans' estates—V. L. page 29.

This act after making sundry provisions (which have since been supplied or super-
feded,) respecting the estates of intestates, makes the following provisions :

IV. *Provided also,* That when any person dies testate, if
he leaves one or two children and no more, he shall not have
power to dispose of more than two-third parts of his estate by

will to any other person or persons than his wife, and one third part thereof at the least shall be given to her. And if such person shall leave more than two children, he shall not leave his wife less than a child's part, according to the number of children ; but if such person leaves no child, then the wife shall have at least one equal moiety of his estate. And if any person shall leave a will, wherein a lesser part of his estate shall be given to his wife than is herein directed, such will, as to so much thereof as relates to the wife, upon her petition to the court where the same shall be proved, shall be declared null and void ; and thereupon she shall and may be empowered to sue for and recover such part of her deceased husband's estate as is herein before directed to be given her.

V. *Provided always*, That if such wife shall die before distribution of her deceased husband's estate shall be made, according to this act, then in such case her executors and administrators shall be empowered to sue for and recover so much of the said estate as shall be given to her by will, and no more, any thing herein before to the contrary notwithstanding.

VI. *Provided also*, That if the widow of any person dying intestate, shall depart this life before the estate of her deceased husband shall be appraised, then the right of such widow to her said husband's estate or any part thereof, shall be determined ; neither shall her executors or administrators, have power to commence or prosecute any suit for recovery thereof.

2. An act of 1727, V. L. page 83, after providing that slaves annexed to land settled, conveyed or devised, may be taken in execution, has the following proviso :

XVI. *Provided nevertheless*, That if any person shall be hereafter possessed of any slave or slaves in right of his wife, which shall be so annexed to lands as aforesaid, such slave or slaves shall not be liable to be taken in execution, or sold for the satisfying any debt of such husband, so as to bar the wife of any right which she may claim under any settlement made in pursuance of this act after his death.

SLAVES.

1748, CHAP. 31, SEC. 3, 4 & 5, PAGE 258, V. L.

III. And whereas many negroes, under pretence of practising physic, have prepared and exhibited poisonous medi-

tines, by which many persons have been murdered, and others have languished under long and tedious indispositions, and it will be difficult to detect such pernicious and dangerous practices if they should be permitted to exhibit any sort of medicine; *Be it therefore further enacted*, That if any negro or other slave shall prepare, exhibit or administer, any medicine whatsoever, he or she so offending, shall be judged guilty of felony, and suffer death without benefit of clergy.

IV: *Provided always*, That if it shall appear to the court, before which such slave shall be tried, that the medicine was not prepared, exhibited or administered, with an ill intent, nor attended with any bad consequences, such slave shall have the benefit of clergy.

V. *Provided also*, That nothing herein contained shall be construed to extend to any slave or slaves administering medicines by his or her master's or mistress's order, in his or her family, or the family of another, with the mutual consent of the owner of such slave, and the master or mistress of such family.

IDEOTS AND LUNATICS.

1.

1785, CHAP. 66.

An ACT for the preservation of the Estates of Ideots and Lunatics.

SEC. 1. *BE it enacted by the general assembly*, That the lands, tenements and chattels of ideots and lunatics, shall be safely kept, without waste and destruction, and they and their household shall live, and be maintained competently with the profits of the same, and the residue, besides their sustentation, shall be kept for their use, to be delivered unto them when they come to right mind: and if they die in such estate, their lands shall be rendered to the right heirs, and their chattels distributed:

SEC. 2. This act shall commence and be in force from and after the first day of January, 1787.

The act of 1793, Vol. I, Page 190, directs that the inquiry whether the person is insane or not, shall be made in the manner "heretofore prescribed." This reference is either to the mode of proceeding in such cases in the English courts, or to the proceedings at the public hospital, in Virginia. As it may be supposed to refer to the latter, the following act is inserted:

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3 Y

2.

1785, CHAP. 87.

An ACT for the restraint, maintenance and cure of persons not sound in mind.

SEC. 1. *BE it enacted by the general assembly,* That the present directors of the hospital for the reception of persons of unsound minds, and their successors, to be chosen when vacancies happen, by joint ballot of both houses of general assembly, are hereby constituted a body politic and corporate, to have perpetual continuance, by the name of the directors of the hospital for the maintenance and cure of persons of unsound minds, and by that name may sue and be sued, and may and shall have and use, a common seal; and are enabled to take and hold any estate, real and personal, given or to be given to the said hospital or to themselves, for the use thereof, so as the annual revenue or income of such donations exceed not one thousand pounds, any law or statute to the contrary notwithstanding; and shall and may, so often as it shall be necessary, choose a president, to continue in office until his death, resignation or removal. And the said directors or any seven of them, the president being one, shall from time to time, ordain regulations for the government of the said hospital, and appoint a keeper or matron thereof, with nurses and guards, when they shall be necessary, and provide for the accommodation, maintenance and cure of the patients remaining and to be received therein. By warrant, to be directed to the sheriff, a justice of peace may order to be brought before him any person whose mind, from his own observation, or the information of others, he shall suspect to be unsound, and with two other justices, who at his request, shall associate with him, shall enquire into the state of such person's mind; and the said justices shall write down as well what shall appear to themselves as what shall be testified by witnesses, touching the supposed insanity; and if two of them adjudge the party to be such a one as ought to be confined in the hospital, and some friend will not become bound, with surety, to restrain and take proper care of him or her, until the cause for confinement shall cease, the said justices, or two of them, shall order the insane to be removed to the said hospital, and there received, and for that end direct a warrant to the sheriff, and a mittimus to the said keeper, transmitting therewith, to the latter, the examinations of the witnesses, and a relation of such facts as the said justices shall think pertinent to the subject, to be laid before the directors.

The said keeper, immediately after the person removed shall be delivered to him, the receipt of whom he shall acknowledge in a writing signed by him and given to the sheriff, shall inform the president thereof, who shall require his colleagues to meet so soon as may be ; and at such meeting, which shall not be unnecessarily delayed, the directors, if having considered the case they concur in opinion with the justices, shall register the insane as a patient ; but they may at any time afterwards deliver him or her to a friend, becoming bound to restrain and take care of him or her, in the same manner as the justices might have done. If the directors differ in opinion from the justices, they shall report the matter to the high court of chancery, who shall thereupon award the writ *de idiota inquirendo*, directed to the sheriff of that county from whence the person supposed to be insane shall have been removed, and such person shall be put into the custody of the said sheriff, and remain there until the inquisition be taken and returned, and then shall be enlarged or registered, as the said court shall order. The court of a county, city or borough, shall refer it to three justices to examine into the state of mind of an infant, child or ward, in their county, city or borough, suggested to such court, by the parent or guardian, to be insane, and upon the report of the said justices, if the suggestion appear to be true, shall order such insane to be removed in the manner before directed, to the hospital, where he or she shall be received and registered. The expence of maintaining, and endeavoring to cure a registered insane, shall be reimbursed out of his estate, if any such there be, and in case of an infant, not an orphan, shall be re-paid by the parent, if of sufficient ability to support such infant, to be adjudged of and certified by the court of the county where such parent resides, and may be recovered by an action commenced and prosecuted in the names of the directors, who shall account for what shall thus come to their hands. Accounts of expences incurred in execution of this act, as well for repairing the hospital, and other necessary incidental works and services, shall be audited and discharged in the same manner as other public accounts. The directors shall enlarge every person confined in the hospital, who shall appear to them to be perfectly cured of insanity, and give such person a certificate thereof. A person registered in the hospital shall nevertheless, during the time of his or her confinement there, be deemed an inhabitant of that county in which was his or her legal settlement at the time of his or her removal to the hospital.

Sec. 2. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.

EXPATRIATION.

OCTOBER 1783, CHAP. 16, SEC. 3.

IN order to preserve to the citizens of this commonwealth, that natural right which all men have of relinquishing the society in which birth or accident may have thrown them, and of seeking subsistence and happiness elsewhere, and to declare explicitly what shall be deemed evidence of an intention in any citizen to exercise that right, *Be it further enacted* That whensoever any citizen of this commonwealth shall, by deed in writing, under his hand and seal, executed in the presence of, and subscribed by three witnesses, and by them, or two of them, proved in the general court, or the court of the county wherein he resides, or by open verbal declaration made in either of the said courts (to be by them entered of record) declare that he relinquishes the character of a citizen, and shall depart out of this commonwealth, such person shall, from the time of his departure, be considered as having exercised his right of expatriation, and shall thenceforth be deemed no citizen.

NOTE—This was re-enacted in 1786.

CITIZENSHIP.

On the following acts, though no longer in force, important interests depend :

1. MAY SESSION 1779, CHAP. 55.

An ACT declaring who shall be deemed Citizens of this Commonwealth.

ALL white persons born within the territory of this commonwealth, and all who have resided therein two years next before the passage of this act, and all who shall hereafter migrate into the same, other than alien enemies, and give assurance of fidelity to the commonwealth, and all infants, wheresoever born, whose father, if living, or otherwise, whose mother was a citizen at the time of their birth, or who shall migrate hither, their father, if living, or otherwise, their mother, becoming a citizen, or who shall migrate hither without fa-

ther or mother, shall be deemed citizens of this commonwealth ; and all others, not being citizens of any of the United States of America, shall be deemed aliens.

2. OCTOBER 1783, CHAP. 16, SEC. 1 & 4, CHAN. REV.

An ACT for the admission of Emigrants, and declaring their rights to Citizenship.

I. WHEREAS it is the policy of all infant states to encourage population, among other means, by an easy mode for the admission of foreigners to the rights of citizenship ; yet wisdom and safety suggest the propriety of guarding against the introduction of secret enemies, and of keeping the offices of government in the hands of citizens intimately acquainted with the spirit of the constitution and the genius of the people, as well as permanently attached to the common interest : *Be it therefore enacted by the general assembly,* That all free persons, born within the territory of this commonwealth ; all persons not being natives, who have obtained a right to citizenship under the act entitled “ an act declaring who shall be deemed citizens of this commonwealth ;” and also all children, wheresoever born, whose fathers or mothers are or were citizens at the time of the birth of such children, shall be deemed citizens of this commonwealth, until they relinquish that character in manner herein after mentioned ; and that all persons, other than alien enemies, who shall migrate into this state, and shall before some court of record give satisfactory proof by oath (or being quakers or menonists, by affirmation) that they intend to reside therein, and also take the legal oath or affirmation, for giving assurance of fidelity to the commonwealth, (which oaths or affirmations, the clerk of the court shall enter on record, and give a certificate thereof to the person taking the same, for which he shall receive the fee of one dollar,) shall be entitled to all the rights, privileges and advantages of citizens, except that they shall not be capable of election or appointment to any office, legislative, executive or judiciary, until an actual residence in the state of two years, from the time of taking such oaths or affirmations, as aforesaid, nor until they shall have evinced a permanent attachment to the state, by having intermarried with a citizen of this commonwealth, or a citizen of any other of the United States, or purchased lands to the value of one hundred pounds therein.

IV. *And be it further enacted,* That the act of assembly passed in the year one thousand seven hundred and seventy-nine, entitled “ an act declaring who shall be deemed citizens

of this commonwealth, shall be, and the same is hereby repealed.

NOTE.—This was re-enacted in 1786.

NAVIGATION.

1748, CHAP. 23, SEC. 1 & 2, PAGE 239, V. L.

An ACT for clearing Rivers and Creeks.

I. WHEREAS many of the rivers and creeks of this colony are stopped and choked up by stones, trees, stumps and rubbish therein, and by hedges, weirs or stone stops, in or cross the same, whereby the passage of boats and other vessels, and of fish, is obstructed, to the great damage of the inhabitants of this colony, and hinderance of trade and commerce.

II. *Be it therefore enacted by the lieutenant-governour, council and burgesses of this present general assembly, and it is hereby enacted by the authority of the same,* That where any river or creek shall be in one county only, the court of such county shall be and is hereby empowered and required to contract and agree with any person or persons they shall think fit to clear the same, as far as it shall be passable for loaded boats, if such obstructions were removed, and to levy so much tobacco in their county levy as shall be sufficient to discharge such agreement; and where any river or creek in this colony shall divide two or more counties, the courts of every such county shall join in such agreement, and levy the charge thereof in proportion to the number of tithables in each county: *Provided always,* that nothing herein contained shall be construed to oblige any county court or courts, to contract for removing rocks, or such obstructions in any river or creek as cannot be removed without the force of gun-powder; and also that the courts of the counties adjoining to the rivers Meherrin, Nottoway, Roanoke and Rappahannock, above the falls thereof, shall not be obliged by this act to contract for the clearing the said rivers, or any of them.

ENTERTAINMENT AND STORAGE.

1663, CHAP. 2, PAGE 6, V. L.

An ACT concerning the entertainment of Strangers.

WHEREAS it is frequent with divers inhabitants of this country to entertain strangers into their houses, without ma-

king any agreement with the party what he shall pay for his accommodation, which if the party live causeth many litigious suits, and if the stranger die lays a gap open to many avaritious persons to ruin the estate of the party deceased : For remedy whereof, for the future,

II. *Be it enacted*, That no person, not making a positive agreement with any one he shall entertain into his house for diet or storage, shall recover any thing against any one so entertained, or against his estate, but that every one shall be reputed to entertain those of courtesy with whom they make not a certain agreement.

LAND LAW OF VIRGINIA.

THE following act is not to be found in any collection of the laws ; it is mentioned in the Chancellor's Revision among the acts expired ; but, as our court of appeals have found it necessary to examine it, I deemed it proper to have it re-printed. Its place is immediately after the 33rd section of the revisor's act, page 429, Vol. I.

MARCH SESSION, 1781, PAGE 8, SESSION ACTS.

An ACT to amend an act entitled " an act giving further time to obtain Warrants upon Certificates for Pre-emption Rights, and returning certain Surveys to the Land-Office, and for other purposes."

WHEREAS the time limited in the act entitled " an act giving farther time to obtain warrants upon certificates for pre-emption rights, and returning certain surveys to the land-office, and for other purposes," to the commissioners for adjusting and settling the claims to unpatented lands within their respective districts, has been found too short for that purpose, *Be it therefore enacted*, That all the powers given to the said commissioners by any act or acts of assembly, shall be continued and remain in force for and during the farther time of twelve months ; and from thence to the end of the next session of assembly ; and that the same time be allowed for making and returning to the land-office, all surveys of land by virtue of entries with the county surveyors heretofore made, according to the established laws and usages, any law to the contrary notwithstanding.

The following act was, through an oversight, omitted in its proper place, which is, page 540, immediately after 18 Elizabeth, Chap. 14, under the head ATTORNEYS.

29 ELIZABETH, CHAP. 5, A. D. 1587.

The Defendant in Penal Actions may appear by Attorney.

BE it enacted, That if any person or persons shall be sued or informed against, upon any penal law, in any of the several courts of the king's bench, common pleas or exchequer, where such person or persons areailable by law, or where, by the leave or favor of the court, such person or persons may appear by attorney, that in all and every such case the person or persons so to be impleaded and sued, shall and may at the day and time contained in the first process served for his appearance, appear by attorney of the same court where the process is returnable, to answer and defend the same, and not be urged to personal appearance, or to put in bail for the answering of such suit; any former law, custom or usage to the contrary notwithstanding.

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